



591111

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITES STATES OF AMERICA,

Plaintiff,

vs.

CONSOLIDATED RAIL CORPORATION,
a/k/a CONRAIL,

Defendant,

Third Party Plaintiff,

vs.

PENN CENTRAL CORPORATION, et al.,

Third Party Defendants.

Case No.
S90-00056

CERTIFIED COPY
When Stamped in Red

The deposition of CHARLES M. WILK,
called by the Defendants for examination, pursuant
to agreement and pursuant to the Code of Civil
Procedure of the State of Indiana, and the Rules of
the Supreme Court thereof, pertaining to the taking
of depositions, for the purpose of discovery, taken
before Lisa M. Otto-Bringle, Notary Public within
and for the County of Cook and State of Illinois,
and a Certified Shorthand Reporter of said State,
CSR License No. 084-003301, at 111 West Jackson
Boulevard, Chicago, Illinois, on the 8th day of
December, A. D. 1992, commencing at approximately
1:30 p.m.

ERNESTO R. ESPIRITU & ASSOCIATES (312) 263-1492

1 PRESENT:

2 DEPARTMENT OF JUSTICE, by
3 PETER E. JAFFE, Esq.
4 (Tenth and Constitution Avenue, N.W.
 P.O. Box 7611
 Washington, D.C. 20530)

5 appeared on behalf of the plaintiff;

6 U.S. ENVIRONMENTAL PROTECTION AGENCY, by
7 KURT N. LINDLAND, Esq.
 (77 West Jackson Boulevard
 Chicago, Illinois 60604)

8 appeared on behalf of the plaintiff;

9 BINGHAM, DANA & GOULD, by
10 PAUL J. LAMBERT, Esq.
11 (1550 M. Street N.W.
 Washington, D.C. 20005)

12 appeared on behalf of the defendant,
 third party plaintiff.

13 FROST & JACOBS, by
14 PIERCE E. CUNNINGHAM, Esq.
15 (2500 Central Trust Center
 201 East Fifth Street
 Cincinnati, Ohio 45202)

16 appeared on behalf of the third party
17 defendant, Penn Central Corporation;

18 GOODWIN, PROCTER & HOAR, by
19 ROBERT A. FREEMAN, Esq.
 (Exchange Place
 Boston, Massachusetts 02109-2881)

20 appeared on behalf of the third party
21 defendant, Gemeinhardt Company, Inc.,

22 o0o
23
24

 ERNESTO R. ESPIRITU & ASSOCIATES (312) 263-1492

I N D E XWITNESSESPAGECHARLES M. WILK

Direct Examination by Mr. Cunningham
Cross Examination by Mr. Lambert

4
78

Certified Question
Certified Question
Certified Question
Certified Question

27
28
46
57

EXHIBITSIDEVD

No exhibits marked.

1 CHARLES M. WILK,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. CUNNINGHAM:

6 Q. You know who I am. I'm
7 Mr. Cunningham. I represent Penn Central.

8 If there's anything that is not
9 clear to you in the way of the form of the question,
10 please just let me know, and we'll try and make it
11 clear so that you understand the question.

12 What is your name?

13 A. My name is Charles M. Wilk.

14 Q. Mr. Wilk, what is your address?

15 A. My home address?

16 Q. Yes.

17 (b) (6)
18

19 Q. And is that in Chicago area?

20 (b) (6)

21 Q. And what is your professional address?

22 A. 77 West Jackson Boulevard, Chicago,
23 Illinois.

24 Q. And who is your employer?

1 A. U.S. -- United States Environmental
2 Protection Agency.

3 Q. And how long have you worked for the
4 Environmental Protection Agency?

5 A. Seven years.

6 Q. When did you begin working for the
7 Agency?

8 A. In September of '85.

9 Q. And before that, had you been
10 employed?

11 A. Yes.

12 Q. And what was your employment?

13 A. Who was my employer?

14 Q. Yes.

15 A. Portland Cement Association slash
16 Construction Technology Laboratories.

17 Q. And do you recall when you were hired
18 by that firm?

19 A. In September of '78.

20 Q. And before that, were you employed?

21 A. Before that I was going to school.

22 Q. All right. Tell me a little bit about
23 your educational background. You graduated from
24 high school?

- 1 A. Yes.
- 2 Q. And where was that?
- 3 A. Evanston Township High School.
- 4 Q. Is that here in Evanston, Illinois?
- 5 A. Yes.
- 6 Q. And following your graduation from
- 7 high school, did you get a -- did you go to college?
- 8 A. Yes.
- 9 Q. Where did you go to college?
- 10 A. Bradley University.
- 11 Q. And was that a four-year course?
- 12 A. Yes.
- 13 Q. And did you attain a degree?
- 14 A. Yes.
- 15 Q. What kind of degree?
- 16 A. Bachelor of science degree.
- 17 Q. And did you major in any particular
- 18 field?
- 19 A. Yes.
- 20 Q. What was that field?
- 21 A. Environmental sciences.
- 22 Q. Did you go on to do any postgraduate
- 23 work?
- 24 A. Yes.

1 Q. Where and for how long?

2 A. I went to Roosevelt University for two
3 and-a-half years.

4 Q. And did you attain a degree there?

5 A. Yes.

6 Q. And what degree did you attain?

7 A. A Masters' degree.

8 Q. And in what field?

9 A. Business administration.

10 Q. And did you continue with your
11 education after that, or did you begin to work or
12 both?

13 A. Well, I went to night school to get
14 the MBA while I was employed.

15 Q. Oh, I am sorry. Okay. So while you
16 were with Portland, you went to night school and
17 attained your Masters degree?

18 A. Yes.

19 Q. And do you specialize in any
20 particular field of environmental?

21 A. I don't understand.

22 Q. Are you a specialist in any particular
23 area dealing with the environment?

24 I know you attained your Masters

1 degree and then began to work for the EPA, but do
2 you specialize or have you emphasized any particular
3 area of the environment?

4 A. Not within the environment, no. I do
5 environmental work.

6 Q. Okay. You seem to imply that there
7 may be something you are specialized in.

8 A. I don't imply that.

9 Q. All right. Then you're not a
10 specialist in any particular area dealing with the
11 environment; is that right?

12 A. That is correct.

13 Q. Okay. In other words, you have no
14 specialized engineering degrees; is that right?

15 A. I do not have an engineering degree.

16 Q. Tell me what your first job with EPA
17 was.

18 A. It was an environmental protection
19 specialist.

20 Q. And what does that mean?

21 A. What does that mean? That's a Series
22 GS 2800 Series physician within the Agency.

23 Q. Can you translate that for me?

24 A. Well, you may wish to ask me what my

1 first position was with the Agency.

2 Q. All right. That sounds like a good
3 place. What was your first position with the
4 Agency?

5 A. Okay. I was -- I worked in the
6 authorization. We call it state authorization in
7 the Resource Conservation Recovery Act program, and
8 I was responsible for reviewing State statutes and
9 State regulations on hazardous waste management
10 facility regulations.

11 Q. And that would have been in 1981?

12 A. That would have been 1985.

13 Q. '85, okay. So you began in '85 with
14 the Agency, and that was your first job?

15 A. That is correct.

16 Q. And then after that, were you
17 promoted, or did you change positions, or are you
18 still --

19 A. Yes.

20 Q. Are you still in that same position?

21 A. No.

22 Q. Okay. Tell me the various jobs you
23 had and what you did in those jobs.

24 A. Okay. I worked as regulatory

1 specialist. That was my first position here with
2 the Agency.

3 Q. Okay.

4 A. Then I worked as a Resource
5 Conservation Recovery Act permit writer, and I
6 reviewed facility, hazardous waste management
7 facility permits for -- well, facilities would apply
8 to the U.S. EPA for permits. I would review the
9 permits and conduct inspections, that sort of thing,
10 in order to be able to write a hazardous waste
11 management facility permit for that facility.

12 Q. So the second job dealt with permits?

13 A. Permitting hazardous waste management
14 facilities.

15 Q. And does that entail setting up
16 limits, if you will, under the permit; is that one
17 of the things that you would do in that kind of a
18 job?

19 A. When you mean -- what do you mean by
20 limits?

21 Q. Well, as I understand it generally,
22 certain permits have limits beyond which if someone
23 exceeds those limits there's a violation. Did
24 you --

1 A. Yes.

2 Q. Did you set up --

3 A. Yes, I did.

4 Q. -- reasonable limits for people in the
5 industry; is that what you did?

6 A. I set limits for hazardous waste
7 management facilities.

8 Q. That would have been part of -- part
9 of the job; is that correct?

10 A. That's correct.

11 Q. And what else was involved in that?

12 A. Reviewing plans and specifications of
13 the facility to be sure that the facility met the
14 regulations for that kind of operation. It included
15 corrective action, which is the cleanup of releases
16 of hazardous waste from a hazardous waste management
17 facility.

18 Q. Anything else?

19 A. Well, there's a whole number -- it's
20 quite an open question. I was hoping you might be
21 more specific.

22 Q. Well, you're doing fine. Just keep
23 going.

24 A. Well, that's all I can recall.

1 Q. And did you after the permit job I'll
2 call it; it's more detailed than that, of course,
3 but after you had that job, did you take another
4 type of position?

5 A. I transferred to the Super Fund
6 program or the Comprehensive Environmental Response
7 Compensation and Recovery Act Program, which is
8 called the Super Fund program.

9 Q. All right. Can you briefly tell me
10 what that is?

11 A. Certain -- Comprehensive Environmental
12 Response Recovery Act, it's the statute that was
13 passed by Congress that gives the EPA the authority
14 to do environmental restoration at sites that are --
15 that pose endangerment to the public and the
16 environment.

17 Q. Did you have any specific training
18 before you went into that particular job other than
19 your educational background, of course?

20 A. I've taken a number of trainings at
21 U.S. EPA on various aspects of the programs.

22 Q. That's what I'm leading to.

23 Tell me about some of the
24 training that you had which would be described, I

1 guess, by me at least as in-house training.

2 A. Okay. As it pertains to CERCLA?

3 Q. Correct.

4 A. I attended the Super Fund Academy that
5 was actually running at that time for new remedial
6 project managers, and that was a six-week training
7 program, two-week stints.

8 Q. And what time period are we talking
9 about when you first went to the Super Fund Academy?

10 A. Let's see.

11 Q. Approximately?

12 A. Well, it was approximately three years
13 ago.

14 Q. All right. So '89 would be roughly
15 the year?

16 A. That's correct.

17 Q. And it was a six-week program that
18 preceded your taking the position as a Super Fund
19 program --

20 A. No.

21 Q. Okay. Give me the chronology then,
22 will you?

23 A. I transferred in as an RPM.

24 Q. What's an RPM?

1 A. Remedial project manager.

2 Q. Is that what you are now?

3 A. That's correct.

4 Q. And what is an RPM?

5 A. What is a remedial project manager?

6 Remedial project manager is responsible for managing
7 projects on the Super Fund Program. It's -- if you
8 want the specific duties of it --

9 Q. Well, just from your own words; if
10 that helps you, that's fine.

11 A. Well, it does help me, so I want to
12 see it. "The RPM is the prime contact for remedial
13 or other response actions being taken or needed at
14 sites on the proposed or promulgated NPL." "NPL"
15 being the National Priorities List, "And for sites
16 not on the NPL but under the jurisdiction, custody
17 or control of a Federal Agency, the RPM's
18 responsibilities include, for fund finance
19 responses, the RPM coordinates, directs and reviews
20 the work of EPA states, the local Government, the
21 U.S. Army Corps of Engineers and all other agencies
22 and contractors to assure compliance with the NCP,"
23 the National Contingency Plan. Actually it's not --
24 actually, it's the National Oil and Hazardous

1 Substances Pollution Contingency Plan.

2 "Based on reports of these
3 parties, the RPM recommends action for decisions by
4 lead Agency officials. The RPM's period of
5 responsibility begins prior to initiation of the
6 Remedial Investigation Feasibility Study, or RIFS,
7 described at 40 CFR 300.430 and continues through
8 design and remedial action deletion of the site from
9 the NPL and the CERCLA cost recovery activity.

10 "For Federally non-fund finance
11 responses, the RPM coordinates, directs and reviews
12 the work of other agencies, responsible parties and
13 contractors to assure compliance with the National
14 Contingency Plan, the Record of Decision, Consent
15 Decree, Administrative Order and lead Agency
16 approved plans applicable to the response.

17 "Based on reports of these
18 parties, the RPM shall recommend actions for
19 decisions by the lead Agency officials. The RPM's
20 period of responsibility begins prior to the
21 initiation of the RIFS as described at 40 CFR
22 300.430, and continues through design and remedial
23 action and the CERCLA cost recovery activity."

24 Q. All right. This recommends actions to

1 be taken by lead Agency officials. You do that, I
2 assume, on a regular basis?

3 A. Yes.

4 Q. All right. Now, the Elkhart site is
5 one of your responsibilities as an RPM; is that
6 right?

7 A. The Conrail railyard site is one of my
8 assigned sites.

9 Q. All right. So you don't have the
10 entire Elkhart site; it's just the railyard?

11 A. There isn't -- I don't believe that
12 there is an entire --

13 Q. Okay. That's fine. I didn't know
14 that.

15 MR. JAFFE: I think we're talking about two
16 different things here.

17 MR. CUNNINGHAM: Yes. I'm just refreshing
18 myself because I wasn't sure.

19 MR. JAFFE: There are several -- there are
20 several NPL sites, just for clarification of the
21 record, there are several NPL sites in the Elkhart
22 area.

23 MR. LINDLAND: One of which is the Conrail
24 railyard.

1 BY MR. CUNNINGHAM:

2 Q. All right. So you concentrate on the
3 Conrail railyard area; is that right?

4 A. I concentrate on the Conrail railyard
5 site that is a site that is listed on the National
6 Priorities List.

7 Q. And how long have you had that
8 responsibility?

9 A. Since July of 1992.

10 Q. Because I hadn't seen your name
11 before; that's the reason I asked you that question.

12 A. I'm sorry. It might be June of 1992.
13 In fact, it is June of 1992.

14 Q. We can say then that since June of
15 1992 you have had the responsibility for the Conrail
16 railyard; is that correct?

17 A. That is correct.

18 Q. And before June of 1992, who was the
19 RPM on that site?

20 A. There have been several RPMs on the
21 site.

22 Q. All right. That's what I'd like to
23 know.

24 A. Would you like the names of those?

1 Q. If you wouldn't mind.

2 A. Okay. There was a Miss Cindy Nolan.

3 Q. And is there any particular
4 chronological order in which you're giving me these
5 names? Was she the first?

6 A. I don't know if she was the first, but
7 I believe -- it switches off enough times that I
8 couldn't be able to tell you the chronological order
9 of people.

10 Q. Well, all right. If you will, do you
11 know the years that she was involved generally?

12 A. No.

13 Q. When did -- let's start -- maybe this
14 will help.

15 When did Elkhart first come out,
16 that is the so-called Conrail railyard area; when
17 did that first surface as a problem, if you will,
18 for the EPA?

19 A. The site was placed on the National
20 Priorities List in August of 1990.

21 Q. All right. Now, how does --

22 A. I'm sorry. It was proposed in June of
23 '88.

24 Q. So between June of '88 and August of

1 1990 certain investigations apparently took place
2 resulting in placement of the railyard on the NPL;
3 is that right?

4 A. I don't know that.

5 Q. Well, it's now in the NPL, isn't it?

6 A. Yes.

7 Q. Briefly how does something graduate,
8 if you will, to that honor?

9 A. Typically a site undergoes a scoring
10 under the hazardous -- HRS, Hazard Ranking System.

11 Q. This is an internal bureaucratic
12 method of deciding what the degree of contamination
13 is, is that right, how serious a particular site is?

14 A. I guess I don't know if internal
15 bureaucratic, I don't -- it's a procedure where the
16 site -- information on the site is gathered or
17 either through document review or fuel
18 investigation, and based on that, the Agency assigns
19 a numerical score to that.

20 Q. That's what I mean. The decision is
21 made by someone such as you in the bureaucracy; is
22 that right?

23 I'm not -- there's nothing wrong
24 with that term. It's a large class of people, I

1 mean.

2 A. It's not by an RPM. It's by a whole
3 set of people who are responsible for hazard
4 ranking.

5 Q. I'm not interested in going into the
6 huge history of it. I'm just trying to see in a
7 brief period of time why a site is placed on there
8 and by whom.

9 A. A site is placed on the NPL because it
10 poses a risk.

11 Q. Okay.

12 A. Or it -- excuse me. It potentially
13 poses. That's the correct answer, or the answer I
14 want to say is that it potentially poses a risk to
15 human health or the environment.

16 MR. JAFFE: Just again for clarification, it
17 is part of the administrative record as to how this
18 site became part of -- to be ranked on the NPL.
19 That is an administrative decision, and therefore
20 it's subject to record review.

21 You're welcome to ask questions
22 as to general procedures as to how things get along
23 the NPL, but as far as this particular site being
24 ranked on the NPL, that is subject to record review,

1 and any questions outside the record, I'm going to
2 object to.

3 MR. CUNNINGHAM: I'm not going to get too
4 deeply into that so that it burdens the record, but
5 I'd like to know who makes the decision.

6 And what you're telling me is
7 it's not one person, but it's rather several people,
8 right?

9 THE WITNESS: That's correct.

10 BY MR. CUNNINGHAM:

11 Q. And does this take place in the region
12 in which the land is located or elsewhere?

13 A. I don't know.

14 MR. JAFFE: Excuse me just one second.

15 (Discussion had off record)

16 THE WITNESS: I guess to be technical about
17 it, I believe the Statute says it's the president
18 that makes the decision, and the president delegates
19 that authority down, and ultimately, as any
20 decision, it's generally one person making that
21 decision.

22 BY MR. CUNNINGHAM:

23 Q. All right. If you can, tell me in the
24 Elkhart Conrail railyard who made the decision?

1 A. I do not know.

2 Q. Okay. Maybe not the individual's
3 name, but would it be a title, an individual who
4 would regularly do that?

5 A. I do not know.

6 Q. Is that only because you weren't here
7 at that time that you don't know that?

8 A. Well, I don't know that that --

9 (Discussion had off record)

10 THE WITNESS: It's the regional
11 administrator.

12 BY MR. CUNNINGHAM:

13 Q. All right. And who is the regional
14 administrator?

15 A. At that time?

16 Q. I don't mind your counsel telling you
17 the answer; it's all right. I'm interested in the
18 answer.

19 You're verifying what your
20 counsel told you?

21 A. Frankly I knew who it was. I just --

22 Q. All right. I'm not playing games with
23 you; just tell me what you know. Don't be afraid of
24 me. I'm trying to help you.

1 A. I'm sorry. What was your question?

2 Q. Who decided to put Conrail on the NPL
3 -- am I correct in that?

4 A. The regional administrator.

5 Q. Okay. And who was that?

6 A. I do not know who the regional
7 administrator was at that time.

8 Q. Do you know about when it took place?

9 A. As we said, it was in June of '90 --
10 or August of '90. I know that Val Adamkus was the
11 regional administrator in August of 1990.

12 Q. And is that individual still with the
13 EPA?

14 A. Yes.

15 Q. Do you know the basis for placing the
16 site on the NPL in 1990 generally?

17 A. The basis is in the administrative
18 record.

19 Q. But I haven't looked at the record.
20 Can you tell me just for purposes of easement?

21 MR. JAFFE: I have to object to that
22 question. It is in the record, and the only way
23 that I would permit him to answer that question is
24 to actually read you from the record, and unless you

1 have those documents in front of you --

2 MR. CUNNINGHAM: I really don't want to waste
3 a lot of time on the issue. It's not a major issue.
4 I'm just trying to put it all together and try to
5 have some understanding as to the basis for it, and
6 if he knows it, the witness, if he doesn't know,
7 then he can just say he doesn't know, and we'll find
8 out another way, but it seems to me that somebody
9 who is a -- you know, in his position making the
10 kinds of decisions required by the law would know
11 that. I'm testing his, you know --

12 MR. JAFFE: I understand your questions, and
13 you have to understand that under the Administrative
14 Procedures Act and under CERCLA, a decision is a
15 decision of the Agency, and therefore it's subject
16 to record review, and anything outside of that
17 record that relates to that decision I'm going to
18 instruct the witness not to answer.

19 MR. LAMBERT: I don't want to sit here and
20 let my silence be taken as a consensus to that
21 proposition. But the question is not -- I don't
22 believe Mr. Cunningham is challenging at this point
23 but listing as a site on the NPL. He's asking for
24 factual information that bears upon how this person

1 does his job as RPM.

2 The fact that it happens to be
3 mentioned in the administrative record doesn't mean
4 that it's outside the scope of cross examination.

5 MR. JAFFE: Well, let's take each question as
6 it comes. I just said as --

7 MR. CUNNINGHAM: He states it better than I
8 could. That's really what I had in mind. I want to
9 know what the basis -- you know, the rationale for
10 placing the site on the NPL because I don't know,
11 and I'd like to know. I mean, I am sorry for my
12 ignorance, but it sounds like a very serious thing
13 where you put something on an NPL list, and you've
14 stated that it presents --

15 THE WITNESS: I can answer your question if
16 you'd like.

17 BY MR. CUNNINGHAM:

18 Q. Okay. That's all I'm asking.

19 A. The Environmental Protection Agency
20 slash TAT also conducted an inspection of Conrail
21 site in July and August of '86. Seven water slash
22 liquid samples and twenty-one soil samples were
23 collected at the Conrail site on July 31st and
24 August 1st of 1986.

1 "The results of these -- of the
2 analysis revealed TCE concentrations as high as
3 5,850 parts per billion and carbon tetrachloride
4 concentrations as high as 117 parts per billion in
5 soil samples.

6 "Based on these results, the
7 downgrade location of TCE, carbon tetrachloride, and
8 carbon -- I'm sorry, TCE and carbon tetrachloride
9 contaminated private wells from the railyard and the
10 history of poor waste handling practices at the
11 railyard. The Conrail site was placed on a roster
12 of sites proposed for inclusion on the National
13 Priorities List in June of 1988. The site went
14 final on the NPL in August of 1990."

15 Q. And the TAT is Technical Assistance
16 Team; is that what that is?

17 A. That's correct.

18 Q. And who was that on that team?

19 A. I don't --

20 Q. It's usually a consultant, isn't it --

21 A. Yes.

22 Q. -- that the Government hires to do
23 certain studies; isn't that right?

24 A. Yes.

1 Q. And do you know who that was?

2 A. No.

3 *** Q. Do you know whether there were any
4 studies that contradicted that study? ***

5 MR. JAFFE: Objection.

6 MR. CUNNINGHAM: Well, what do you mean? Why
7 would you object to that? I mean, it's a legitimate
8 question; does he know. Was that the only opinion
9 that was given, or did you -- did the Agency rely on
10 other opinions?

11 MR. JAFFE: That is part of the
12 administrative record, and I realize -- I can't --
13 it is available to you through the administrative
14 record. All of these answers to these questions are
15 available through the administrative record, and
16 there's no reason to be asking this deponent those
17 questions when they're available to you, and it is
18 privileged.

19 So it's all -- all of that stuff
20 is -- and I don't see any reason why you need to ask
21 this deponent these questions.

22 MR. CUNNINGHAM: I think it's legitimate
23 cross examination. You can object, and he can
24 answer unless you instruct him not to answer.

1 MR. JAFFE: I am instructing him not to
2 answer.

3 MR. CUNNINGHAM: Well, then we would want
4 that question certified and, you know, we'll so note
5 so that the Federal Judge can decide whether those
6 kinds of questions ought to be answered or not.

7 MR. JAFFE: That's your right.

8 MR. CUNNINGHAM: Is that satisfactory with
9 you? I don't want to belabor this thing but --

10 MR. LAMBERT: Well, I'll ask my own questions
11 and deal with the responses as we see fit, but for
12 the record, I don't agree with Mr. Jaffe's position
13 on that particular one.

14 BY MR. CUNNINGHAM:

15 *** Q. So you don't know whether or not there
16 was a countervailing opinion with respect to placing
17 this site on the National Priority List? ***

18 MR. JAFFE: I've objected to that question.
19 He is not answering to this, whether he knows or
20 doesn't know, and I will object to it again if you
21 ask it again.

22 MR. CUNNINGHAM: Then preserve that same
23 motion.

24 BY MR. CUNNINGHAM:

1 Q. All right. Do you know what health
2 risk exists at Elkhart?

3 A. "As part of the feasibility study for
4 this interim action," which is the interim action in
5 the Record of Decision that was made in June 28 of
6 1991 -- so let me start over.

7 Reading from the Record of
8 Decision of June 28th, 1991, "As part of the
9 feasibility study for this interim action, a
10 preliminary risk assessment was prepared to evaluate
11 the need for implementation of an interim remedial
12 measure designed to immediately reduce or eliminate
13 public exposure to contaminated groundwater.

14 "This risk assessment as
15 indicated by its title is preliminary in nature with
16 more specific findings of the baseline risk
17 assessment to be included in the subsequent final
18 action Record of Decision and the ultimate cleanup
19 objectives for the groundwater remediation and for
20 the site.

21 "Relative to this interim
22 remedial action, many residents in the area rely on
23 this groundwater as their domestic water supply
24 source. Residents using the groundwater can be

1 exposed to the contaminants it contains. The most
2 significant exposures generally result from direct
3 consumption of the water itself and beverages made
4 with the water and through dermal contact with the
5 water and inhalation of vapors from the water while
6 bathing.

7 "U.S. EPA calculated an
8 unacceptable public health risk for exposure to the
9 contaminants of concern, i.e., TCE and carbon
10 tetrachloride. Based on the exposure required for
11 one additional person in a million to contract -- to
12 contract cancer if exposed to TCE or carbon tet.
13 over a lifetime, he notes, 'These risks are in
14 addition to normal risks of cancer posed in everyday
15 life.' For a one in million lifetime health risk
16 U.S. EPA determined that if an individual is exposed
17 to greater than 1.23 parts per billion of TCE or
18 0.152 parts per billion of carbon tetrachloride,
19 then that person would be at risk of contracting
20 cancer.

21 "Also another standard developed
22 by U.S. EPA's office of drinking water was utilized;
23 specifically the National Primary Drinking Water
24 Standards NCL for current substances in drinking

1 water. These standards are set at levels as close
2 to the level at which no known or anticipated
3 adverse health effects would occur allowing an
4 adequate margin of safety, it can be feasibly
5 achieved -- excuse me, as can be feasibly achieved
6 using best available technology.

7 "For both TCE and carbon
8 tetrachloride, the NCL is five parts per billion, as
9 can be seen from the above figures and figures
10 provided the previous section." I guess that's
11 not --

12 MR. LAMBERT: When you read from something,
13 as you've been doing, can you just tell us what
14 you're reading from and the page?

15 THE WITNESS: I did that, sir.

16 MR. LAMBERT: I'm sorry. I just didn't hear.

17 MR. JAFFE: Also the page number for the
18 record is page 11.

19 MR. LAMBERT: I don't think he said that.

20 MR. CUNNINGHAM: I don't recall, and it's
21 only because I wasn't listening and should have been
22 what you've been reading from.

23 THE WITNESS: As I stated, it was the Record
24 of Decision for the site dated June 28th, 1991.

1 MR. JAFFE: Excuse me.

2 (Discussion had off record)

3 BY MR. CUNNINGHAM:

4 Q. And do you have any independent
5 recollection of that?

6 I mean, you're relying on some
7 written material from the ROD. And what I'm asking
8 is from your own personal knowledge, do you know of
9 any risk or threat to the residents in the Elkhart
10 area?

11 A. I know that the concentrations of TCE
12 and carbon tetrachloride exceed the NCL in
13 groundwater at the site, and I know that exceeding
14 the NCL generally exceed the risk, the acceptable
15 risk ranges at sites, and it's on that basis that we
16 take an action at a site.

17 Q. What about the -- is that an immediate
18 threat, or what kind of a risk or threat is that,
19 from your own knowledge? I mean, you know, just
20 based on what you know about this site as an RPM.

21 A. Can you explain to me what you mean by
22 immediate threat?

23 Q. Well, that's what I want; what degree
24 of risk involved here? I mean people have been --

1 A. It is greater than one times ten of
2 the minus fourth additional risk of cancer.

3 Q. But I mean, is there an immediate
4 risk; is there a remote risk? How would you
5 describe it?

6 A. It means that --

7 Q. Well, I'd like the witness to answer
8 the question.

9 MR. JAFFE: I'm sorry. I didn't say
10 anything. I was talking to Kurt. I'm sorry.

11 THE WITNESS: He was not telling me what to
12 say. In fact, I didn't hear anything he said.

13 MR. CUNNINGHAM: Okay. I'm sorry. Go ahead.

14 THE WITNESS: What was the question? I
15 forgot.

16 MR. CUNNINGHAM: Do you want to repeat the
17 question for him?

18 (Question read)

19 BY MR. CUNNINGHAM:

20 Q. Do you understand what I'm saying?

21 A. Yes.

22 Q. Again, in your own personal
23 understanding of this site?

24 A. Okay. What it means is that persons

1 using the water that's contaminated water around the
2 site would face a risk of contracting cancer that in
3 addition to their normal, everyday risk of
4 contracting cancer over their lifetime of ten to the
5 minus fourth; that means one over ten with four
6 zeros under it.

7 Q. But you're talking in terms of
8 likelihood or probability based on statistics is
9 what you're talking about; is that right?

10 I mean, you're talking about a
11 threat or a risk; am I right about that?

12 A. It's a risk; that's correct. I mean,
13 I guess what we're trying to say, and I'm sorry if I
14 appear to be -- to have to check references and that
15 but --

16 Q. No. You're doing the best you can.

17 A. -- I feel I have to be very accurate
18 in responses because this is a legal proceeding.

19 Q. Right.

20 A. What it means is if you -- if a
21 resident were to drink the water or use -- or
22 consume the water from this site based on that it
23 exceeds the NCL, it would mean that they pose --
24 their risk of contracting cancer is increased by 1

1 in 10,000, and that's based on that these -- that
2 the concentrations of contaminants in the
3 groundwater exceed NCL.

4 As I stated before, the Record of
5 Decision was written using a preliminary risk
6 assessment, and so the risk was quantified
7 sufficient for the purposes of writing an interim
8 Record of Decision.

9 Q. Well, let's ask another question, if
10 you don't mind. I think you've tried the best you
11 can to answer that.

12 The risk, has it been there since
13 1986 until the present time, the risk of cancer, if
14 you know?

15 A. Okay. Could you repeat the question
16 for me?

17 (Question read)

18 MR. LAMBERT: Can I interpose an objection?
19 I think that Mr. Cunningham established that the
20 witness is not an expert on any particular area of
21 environmental science, or at least he hasn't
22 established that he is, and that question as it's
23 asked calls for an opinion answer unless it is
24 eliciting a reading from the ROD. And insofar as it

1 calls for an opinion answer, then I want to make
2 sure that the record is clear that we do not agree
3 that this witness is an expert --

4 MR. CUNNINGHAM: I'm not asking for an expert
5 opinion.

6 MR. LAMBERT: Fine, but that's the way the
7 question is stated and --

8 MR. CUNNINGHAM: I don't think it is, but you
9 may have taken it that way.

10 MR. LAMBERT: I may have taken it, but just
11 so the record is clear that by not objecting, that
12 if we sit here silent, we're not conceding that this
13 witness is an expert and entitled to opinion
14 evidence on anything.

15 MR. CUNNINGHAM: I would agree with you
16 there.

17 MR. JAFFE: Let me just state for the record
18 that we don't concede that he is not an expert,
19 although we're not putting forth that he's an expert
20 today.

21 MR. CUNNINGHAM: Well, if he's an expert,
22 what area is he an expert in?

23 MR. JAFFE: I'm saying -- it's your
24 deposition. I haven't put him forth as an expert.

1 I'm just not precluding the fact that he may be put
2 forth as an expert at another time. At that point
3 we'd be happy to voir dire him.

4 BY MR. CUNNINGHAM:

5 Q. All right. Do you understand the
6 question?

7 A. No.

8 Q. All right. Let's restate it.

9 A. Could you actually ask me the question
10 again because actually --

11 Q. Let me see if I can restate it.

12 A. All right.

13 Q. You stated that there has been as a
14 result of high levels of TCE and carbon tet. in the
15 groundwater a threat or risk to residents using that
16 water of cancer; have you not?

17 A. Could you repeat that?

18 Q. It's my understanding from your
19 testimony that you have indicated that people using
20 the water in the Elkhart area near the yard have a
21 risk of getting cancer from drinking that water; is
22 that correct? Have you, or haven't you?

23 A. That's correct.

24 Q. And has that risk existed from 1986

1 based on your understanding of this case?

2 A. Yes.

3 Q. All right. What is your definition of
4 imminent risk; do you have that? I want your
5 understanding of it in this case, not some
6 regulation. You know, you can refer to it, but I'm
7 more interested, Charles, in your understanding of
8 that word without referring to the ROD, what is your
9 understanding of the word imminent?

10 MR. JAFFE: Are you asking for his personal
11 understanding of the word imminent --

12 MR. CUNNINGHAM: Um-humn, that's right.

13 MR. JAFFE: -- or his understanding of the
14 word imminent as it relates to his job as --

15 MR. CUNNINGHAM: We'll get to that.

16 MR. JAFFE: Well, which are you asking?

17 MR. CUNNINGHAM: First his understanding of
18 the word. What does it mean?

19 MR. JAFFE: In general language, general,
20 English language?

21 MR. CUNNINGHAM: Right.

22 THE WITNESS: You want my understanding of
23 the general, English language of what it means to be
24 imminent?

1 BY MR. CUNNINGHAM:

2 Q. Yes.

3 A. It means that it can --

4 MR. JAFFE: I was just going to object as
5 irrelevant, but you're welcome to answer.

6 THE WITNESS: Well, if you object, I'm not
7 answering.

8 MR. JAFFE: No, no. You answer this
9 question.

10 BY MR. CUNNINGHAM:

11 Q. Go ahead.

12 A. Imminent means that something can
13 happen right away.

14 Q. Immediate, is that what you're saying
15 may be your definition?

16 A. Right. If I had a thesaurus in front
17 of me, I'd probably refer to that, and I'm quite
18 sure the thesaurus would say it means immediate.

19 Q. And is there an imminent threat to the
20 health of people in Elkhart at this time?

21 A. Yes.

22 Q. And what is the basis for your saying
23 that?

24 A. That concentration of contaminants in

1 groundwater that people can access exceeds the
2 maximum concentration limits set by the Safe
3 Drinking Water Act standards.

4 Q. And has there been a medical
5 consultant that you have hired to determine the
6 imminency of that threat in this case?

7 MR. JAFFE: I object to that as far as it
8 calls for anything relating to the litigation, but
9 as far as it relates to anything related to risk
10 assessment for cleanup purposes, you should answer.

11 THE WITNESS: Okay. When we conduct a
12 reinvestigation, we also conduct what's known as a
13 baseline risk assessment, and a baseline risk
14 assessment is done by people who are specialists in
15 risk, and we are right now in the remedial
16 investigation for the site and will be finalizing or
17 be coming out with a baseline risk assessment.

18 BY MR. CUNNINGHAM:

19 Q. I see. So that --

20 A. For the purposes of the Record of
21 Decision for the interim remedy, that passage that I
22 read you talked about how the risk was quantified to
23 be able to come up with a determination that is made
24 by Mr. Admkus that states, "Releases of hazardous

1 wastes" -- excuse me, "Releases of hazardous
2 substances from the site through exposure to the
3 groundwater if not addressed by the preferred
4 alternative or one of the other measures discussed
5 in this plan may present an imminent and substantial
6 endangerment to public health, welfare and the
7 environment."

8 MR. JAFFE: For the record, Mr. Wilk is
9 reading from page 12 of the --

10 THE WITNESS: Record of Decision.

11 BY MR. CUNNINGHAM:

12 Q. And who is the individual you were
13 referring to?

14 A. Well, Mr. Admkus signed this.

15 Q. And what are his qualifications; do
16 you know?

17 A. Well, he's the regional administrator
18 for the region.

19 Q. Well, I guess what I'm asking you is
20 this: What doctor or medical individual says that
21 there's an imminent threat in this situation?

22 You've talked about an imminent
23 threat, risk to health. What individual or
24 individuals has the Government relied on to conclude

1 that this risk is imminent?

2 MR. JAFFE: Again, I object, but you can
3 answer to the extent that it's shown on the record.

4 THE WITNESS: That information is shown on
5 the administrative record. On the record --

6 BY MR. CUNNINGHAM:

7 Q. Do you have an independent
8 understanding of -- do you have independent
9 knowledge of a basis for a medical decision such as
10 I have posed to you?

11 A. Are you asking me do I know the name
12 of the person --

13 Q. It doesn't have to be the name of the
14 person necessarily, but upon what did the Government
15 rely, okay, in concluding that there is an imminent
16 health risk there? That's what I want to know.

17 A. Generally at a site, the ATSDR, Agency
18 for Toxic Substances and Disease Registry, does a
19 health assessment of a site -- of a site.

20 Q. I see. And was that done --

21 A. Generally many times a county or a
22 State public health agency does an assessment of a
23 site, and the EPA has internal risk assessors who do
24 an -- who do an estimation of the risks posed by a

1 site.

2 Q. And was that done in this case to your
3 knowledge?

4 A. I do not know.

5 Can we take a break?

6 MR. CUNNINGHAM: Sure.

7 MR. JAFFE: Sure.

8 (Short recess taken)

9 MR. CUNNINGHAM: Okay. What was the last
10 question?

11 (Question read)

12 BY MR. CUNNINGHAM:

13 Q. With respect, Mr. Wilk, to the
14 Government's basis for the contention that there is
15 an imminent health risk there, you indicated that
16 there was some medical basis for that decision; is
17 that what you said?

18 A. No.

19 Q. Okay. What did you say then?

20 A. Can you repeat the question?

21 Q. What was the Government's basis for
22 finding that there was an imminent threat to the
23 health of people in the Elkhart area as a result of
24 this railyard?

1 A. That's in the administrative record.
2 That's in the administrative record for the Record
3 of Decision.

4 MR. JAFFE: I think I can streamline this a
5 little bit here. If there's objections from any of
6 the other counsels, I would like to make a standing
7 objection to any decisions of the record. I'll
8 allow the witness to answer those types of questions
9 by summarizing what's in the record if he knows the
10 answer to the summary of the record, but anything
11 outside the record, I'm just going to make a
12 standing objection to it, if that's all right with
13 you.

14 MR. LAMBERT: When it gets around to me,
15 please state your objection so I know there's an
16 issue.

17 MR. JAFFE: I'll object if you like. Would
18 you rather have a standing objection, or would you
19 rather have me object to each question?

20 MR. CUNNINGHAM: I'd rather have a standing
21 objection. I understand what you're saying. I
22 disagree with it, and I want this witness'
23 independent recollection. If I wanted to read the
24 record, I would have done that. I want his answers,

1 what he knows about this case, and I think we're
2 entitled to that.

3 MR. JAFFE: Just so you understand, I do not
4 believe you're entitled to that.

5 MR. CUNNINGHAM: I know you don't, but I'm
6 saying if you want to instruct him not to answer,
7 then we want an Order from the Court instructing him
8 to answer those questions.

9 MR. JAFFE: And that's your right.

10 MR. CUNNINGHAM: That's right. All I'm
11 saying is when you don't want him to answer, tell
12 him, "I don't want you to answer it."

13 MR. JAFFE: So you want it for each question.
14 Okay. I'll be happy to do that.

15 MR. CUNNINGHAM: Okay. Are you going to
16 permit him to answer that question?

17 MR. JAFFE: I'll permit him to summarize what
18 the record states.

19 MR. LAMBERT: He just read that passage.

20 MR. JAFFE: Well, if he doesn't know anything
21 other than that, so be it.

22 MR. LAMBERT: Well, let's not ask him to read
23 it again.

24 THE WITNESS: Do you think I like reading it?

1 MR. LAMBERT: I don't think you do, and we
2 don't like paying for the pages, and it's just a
3 waste of time.

4 BY MR. CUNNINGHAM:

5 Q. What is your independent understanding
6 of the Government's basis for its contention that
7 there is an imminent health threat in Elkhart as a
8 result of this yard?

9 MR. JAFFE: Objection.

10 When I say object, you should
11 answer as to what's in the record, yes.

12 MR. CUNNINGHAM: We don't want what's in the
13 record.

14 MR. JAFFE: You may answer.

15 MR. CUNNINGHAM: We want what his
16 recollection is.

17 THE WITNESS: Answer what's in the --
18 summarizing the record?

19 MR. JAFFE: Yes.

20 THE WITNESS: Okay.

21 BY MR. CUNNINGHAM:

22 *** Q. First of all, do you have an
23 independent understanding of the Government's basis
24 for its position or not --

1 MR. JAFFE: Objection, irrelevant.

2 MR. CUNNINGHAM: -- outside the record? ***

3 MR. JAFFE: Same objection.

4 MR. CUNNINGHAM: Is there an instruction for
5 him not to answer the question? You know, we don't
6 want to go through this.

7 MR. JAFFE: Yes. Objection, instruction not
8 to answer.

9 MR. CUNNINGHAM: Okay. Well, state it that
10 way, and that will help us.

11 All right. Well, certify that
12 question and answer.

13 BY MR. CUNNINGHAM:

14 Q. Do you know of any medical authority
15 who has assisted the Government in taking the
16 position that there is an imminent threat to health
17 in the Elkhart area or not?

18 MR. JAFFE: Objection. You can answer as to
19 what's in the record.

20 MR. CUNNINGHAM: We're not interested, again,
21 in what's in the record. We're interested in --

22 MR. JAFFE: All right. I've stated my
23 objection. I'm trying to keep it short so that we
24 don't end up paying for a lot of pages.

1 Objection. I instructed him not
2 to answer except as to what is in the record.

3 BY MR. CUNNINGHAM:

4 Q. Are you familiar with a bottled water
5 program in Elkhart?

6 A. Yes.

7 Q. What do you know about it?

8 A. When you mean bottled, you mean
9 bottled like --

10 Q. Yeah, in a bottle, like that?

11 A. I understand there are residents that
12 have bottled water in Elkhart.

13 Q. And is there a program that EPA has
14 instituted in that connection for residents of that
15 area?

16 (Discussion had off record)

17 THE WITNESS: My answer to your previous
18 question, am I aware of bottled water, I wouldn't
19 call it bottled water. What I would say is there is
20 a system set up where residents in the area have
21 filters on their water, on their water mains or at
22 their tap that provide them filtered water.

23 BY MR. CUNNINGHAM:

24 Q. How did that become established?

1 A. That became established by the EPA
2 working with the Indiana Department of Environmental
3 management.

4 Q. And do you know when that was?

5 A. I do not have -- I do not know the
6 start date for that.

7 Q. Do you know how many homes are
8 affected?

9 A. I do not know the number, the exact
10 number.

11 Q. What's the status of the site insofar
12 as the cleanup is concerned at this time; do you
13 know?

14 A. We have issued an interim, a Record of
15 Decision for the interim remedy in June 28, 1991.
16 We are currently working with Conrail for the
17 remedial design of the actions that were required
18 under the Record of Decision, and subsequent after
19 the decision is completed, we will be doing the
20 actual remedial action.

21 Right now the U.S. EPA is
22 continuing its remedial investigation at the site
23 and feasibility study at the site. After that is
24 completed, we will issue a Record of Decision on

1 that, and most likely that Record of Decision will
2 be a final remedy for the site.

3 Q. And who has the Government contracted
4 with as its consultant?

5 A. Ecology and Environment is conducting
6 their remedial investigation and feasibility study
7 for the U.S. EPA.

8 Q. And are their reports contained in the
9 files that were turned over to us by the U.S.
10 Attorney's Office?

11 A. To my knowledge, yes.

12 Q. All right. Let's go off the record
13 with regard to those files.

14 (Discussion had off record)

15 MR. CUNNINGHAM: Mr. Wilks was presented by
16 agreement between the Government and Penn Central as
17 a substitute for Mr. Dalga. I want the record to be
18 clear that we may still want to take the deposition
19 of Mr. Dalga and Janet Carlson.

20 We do understand the Government's
21 objection with regard to Carlson, but I did want to
22 state that for the record.

23 MR. JAFFE: I will also state for the record
24 that we do object to the deposition of Janet Carlson

1 for reasons of attorney/client privilege and work
2 product.

3 Also I should mention for the
4 record that Mr. Wilks is also being produced today
5 pursuant to Conrail's Deposition Notice of Chuck
6 Wilk as well as Penn Central's.

7 MR. CUNNINGHAM: Fine. All right. Back on
8 the record with the questions.

9 BY MR. CUNNINGHAM:

10 Q. Do you know Mr. Dalga?

11 A. Yes.

12 Q. And in what connection do you know
13 him?

14 A. He was a remedial project manager just
15 as I am a remedial project manager, and our times as
16 remedial project managers -- you know, we were both
17 at the agency at the same time.

18 Q. He immediately preceded you in this
19 same position?

20 A. No.

21 Q. Tell me the chronology, please.

22 A. Mr. Dalga left the Agency in some date
23 in '92. I don't recall the month. And I came into
24 his old section, the section that he had left, on

1 June 15th of 92, and there is some time there where
2 there was not a remedial project manager staff
3 working on-site.

4 Q. How long a period was that?

5 A. I don't recall the exact length, the
6 exact number of months.

7 Q. Do you know who made the
8 recommendation with regard to the 106 Order?

9 MR. JAFFE: Can you restate the question?
10 What recommendation?

11 BY MR. CUNNINGHAM:

12 Q. Well, one of your jobs is to recommend
13 certain actions, is it not, as I understand your
14 definition of your job?

15 A. That's correct.

16 Q. What actions have you recommended in
17 this case?

18 MR. JAFFE: Are you asking for everything
19 he's ever recommended to do with the site, or are
20 you asking specific questions?

21 MR. CUNNINGHAM: Well, recently. He's only
22 been in it since June in this case, right?

23 MR. JAFFE: The reason I'm asking is he
24 recommends on a daily basis, he probably recommends,

1 "Put the well here. Do this here." You can be
2 more --

3 BY MR. CUNNINGHAM:

4 Q. Well, if you can summarize your
5 recommendations in this case.

6 A. I recommend enforcement action to be
7 taken in this case. I recommend the contracting
8 actions to be taken at Conrail.

9 Q. For example, what things have you
10 recommended that you can recall?

11 A. For example, I recommend --
12 recommended the approval or disapproval of Conrail's
13 first version of the RDRA work plan. I recommend or
14 comment on the remedial design oversight contract
15 for the site, the RIFS, continue work on the RIFS
16 work at this site.

17 Q. With respect to Penn Central, have you
18 made any recommendations?

19 MR. JAFFE: I'm going to object to that
20 question because it has to do with -- anything
21 having to do with attorney/client privilege or work
22 product, but if it has to do with -- anything having
23 to do with the cleanup, you're free to answer.

24 THE WITNESS: How about enforcement?

1 MR. JAFFE: If it has to do with this
2 litigation or anything in preparation for this
3 litigation, you're instructed not to answer.

4 THE WITNESS: Okay. I won't answer.

5 MR. CUNNINGHAM: I'm sorry?

6 THE WITNESS: Let me just ask --

7 (Discussion had off record)

8 THE WITNESS: No.

9 BY MR. CUNNINGHAM:

10 Q. Your answer, please?

11 A. Is I decline to answer.

12 MR. CUNNINGHAM: Have you instructed him not
13 to answer that question?

14 MR. JAFFE: I have instructed him not to
15 answer as to anything that is privileged under work
16 product or attorney/client privilege.

17 MR. CUNNINGHAM: I understand that.

18 BY MR. CUNNINGHAM:

19 Q. You can answer.

20 A. What else have I recommended on this
21 site?

22 Q. With respect to Penn Central, right.

23 A. Well, I decline to answer.

24 Q. Well, I am sorry. I don't accept your

1 declination of refusal to answer.

2 A. There's nothing outside the privileged
3 information.

4 Q. So everything that you recommended was
5 -- is part of the privilege; is that what you're
6 saying, that he's been -- is that right? I mean, I
7 want to know the reason for your declination. I
8 don't want to go to a Federal Judge without some
9 serious reason.

10 MR. JAFFE: I'm instructing him not to answer
11 -- he is part of the decision-making process and the
12 investigatory process in preparation for litigation
13 in this action and in other actions.

14 Anything that he has done which
15 is in preparation for litigation solely for the
16 purpose of preparation of litigation is under the
17 work product privilege.

18 He is also the client, part of
19 the client agency. Any conversations he has had
20 with attorneys such as myself or Kurt Lindland or
21 anybody else at the Department of Justice or anybody
22 else at the Office of Regional Council are
23 privileged conversations and communications between
24 attorney and client.

1 Anything that he has done within
2 those two areas are privileged.

3 MR. CUNNINGHAM: Well, we don't think they
4 are.

5 MR. LAMBERT: Would you object to him
6 answering the question if it related to subject
7 matters on which he -- regarding Penn Central as to
8 which he made recommendations without getting, at
9 this point, without conceding your position, without
10 getting into what his recommendation was, so at
11 least we would know whether or not this is something
12 that's worth pursuing.

13 MR. JAFFE: I'm not sure I understand your
14 question.

15 MR. LAMBERT: I think typically in order to
16 claim the privilege, you have to -- the burden is on
17 the person claiming the privilege, and there has to
18 be some showing that there was a communication on a
19 subject matter of some sort or other subject to the
20 privilege.

21 Usually you're allowed to inquire
22 at least as to subject matter so that you would know
23 whether or not that which the privilege was claimed
24 is something that might at least fall within the

1 scope of the privilege.

2 MR. JAFFE: He is free to answer as to
3 whether such communication exist.

4 MR. LAMBERT: And the subject matter?

5 MR. JAFFE: And the general subject matter as
6 to those communications but not as to the specifics
7 of those communications or the specific
8 recommendations that he has made.

9 Can you answer in that way?

10 THE WITNESS: What I'd like to answer is what
11 I've told you is what I recall for the
12 recommendations I have made other than the things
13 that I've been advised is privileged information.

14 BY MR. CUNNINGHAM:

15 *** Q. Well, what recommendations have you
16 made then that fall outside of any dealings with
17 your attorney with regard to Penn Central? ***

18 A. Penn Central exclusively?

19 Q. Yes, that's the question. Right.

20 A. Nothing that isn't privileged.

21 Q. Okay. So everything you have done or
22 recommended in this case has been --

23 A. Specifically to Penn Central?

24 Q. Yes.

1 A. And I guess what I mean specifically,
2 Penn Central alone, not Penn Central and Conrail as
3 a matter of what is the remedial investigation that
4 we're taking or the feasibility study that we are
5 taking.

6 MR. CUNNINGHAM: Okay. Well, we certify that
7 question as well. We don't agree with your
8 privilege. It's far too sweeping. There's no
9 showing of what communication there was, and so as a
10 result, the record exists silent with regard to what
11 type of communication between attorney and client
12 took place, but we'll raise that question later on.

13 BY MR. CUNNINGHAM:

14 Q. Now, with respect to decision -- what
15 I'm trying to get at is what decisions did Dalga
16 make and what decisions did you make with regard to
17 this site?

18 A. I imagine I recommended to go ahead
19 and issue a Unilateral or made a recommendation to
20 issue a Unilateral to Conrail and Penn Central
21 because I was the RPM at the time that we were doing
22 the final drafting of that.

23 Q. And that was --

24 A. And I guess --

1 Q. And that was when?

2 A. May I just continue my answer, please?

3 Q. Sure, of course you can.

4 (Discussion had off record)

5 THE WITNESS: I was the remedial project
6 manager at the time we were finalizing that
7 Unilateral to be issued to Penn Central and Conrail.

8 When I picked up the project, the
9 Unilateral had been substantially completed. There
10 are a number of things that needed to be changed.
11 We looked at drafts and that kind of stuff,
12 finalizing language and those types of things.
13 Based -- I didn't have a reason with what I knew
14 about the site to recommend that the Unilateral not
15 be issued.

16 BY MR. CUNNINGHAM:

17 Q. What part did Mr. Dalga play in the
18 decision to take the Unilateral?

19 A. To issue a Unilateral?

20 Q. Yes.

21 A. I don't know. I don't have knowledge
22 of that.

23 Q. Did you consult with him about the
24 Unilateral and whether to issue it or not?

1 A. No.

2 Q. What had been --

3 A. There was no need to consult with
4 Dalga.

5 Q. Why not?

6 A. Because the Agency had already made a
7 decision to issue a Unilateral.

8 Q. So you just carried out -- well,
9 strike that.

10 Where is Mr. Dalga now?

11 A. He's with a consultant.

12 Q. And he's no longer with EPA, as I
13 understand it; is that correct?

14 A. That is correct.

15 Q. And what consultant is he with?

16 A. I don't know.

17 Q. Can you find out?

18 A. Yeah.

19 Q. Will you let me know through
20 Mr. Jaffe?

21 A. Yes.

22 Q. How long did he work on the file,
23 Dennis Dalga, and what did he --

24 A. On the site?

1 Q. On the site, yes.

2 A. I don't know.

3 Q. Do you know what he did in this case
4 at all?

5 A. I believe he was the RPM at the time
6 that the Record of Decision was issued.

7 Q. Would he have been responsible for the
8 investigative files of the EPA with regard to
9 Mr. Claude Brewton, or would you have?

10 A. I do not know if Mr. Dalga was the
11 person who had to deal with the investigative files
12 of -- what was the person's name?

13 Q. Claude Brewton, B-r-e-w-t-o-n.

14 A. Brewton, and I was -- other than I'm
15 responsible for files now, I wasn't responsible at
16 the time whatever you're saying happened because I
17 don't --

18 Q. Okay. Do you know who Mr. Brewton is?

19 A. No.

20 Q. Did you have anything to do with the
21 investigation which resulted in an Affidavit that is
22 part of the record from Mr. Brewton?

23 A. No.

24 Q. Do you know whether the files that

1 have been turned over to us recently in these boxes
2 yesterday contain all of the investigative files
3 regarding Brewton and Berkshire?

4 A. I guess my answer would be how would I
5 know that without going through your boxes to figure
6 out what you have?

7 Q. I don't know. That's what I'm trying
8 to figure out.

9 A. And with the knowledge of what exists,
10 so I guess the answer is no.

11 Q. Have you talked with your attorney
12 about what files were turned over to us?

13 A. Yes.

14 Q. Okay. Do you -- I guess my question
15 is do we have everything, okay, having to do with
16 investigations done centering around Mr. Claude
17 Brewton and Mr. Ted Berkshire?

18 A. To the best of my knowledge, yes.

19 Q. Well, that I would like you to talk to
20 your attorney about because I want to get everything
21 you have that are part of this investigation, so if
22 you don't mind, ask him.

23 Let's go off the record a minute.

24 (Discussion had off record)

1 MR. CUNNINGHAM: It's my understanding,
2 correct me if I'm wrong, Mr. Jaffe, that the boxes
3 of files -- or the box of files that was turned over
4 to us yesterday contains the entire investigative
5 files having to do with Claude Brewton and Ted
6 Berkshire; is that right?

7 MR. JAFFE: As I said to you when we were off
8 the record, we have -- we know that that is part of
9 -- those were subject to the Discovery request that
10 you made pursuant to this Deposition Notice. Those
11 documents were pulled in reviewing all the files and
12 that with the exception of some that may be on the
13 privileged list, without having going back and
14 reviewing the privileged list, we have pulled and
15 turned over to you all of the documents relating to
16 those two people which we're aware.

17 BY MR. CUNNINGHAM:

18 Q. All right. Mr. Wilk, do you know who
19 conducted the investigation that resulted in
20 obtaining the Affidavit of Mr. Brewton?

21 A. No.

22 Q. Who generally conducts investigations
23 for the EPA; do you know?

24 A. Just any old investigation?

1 Q. Well, that's I want to know. Tell me
2 about that. I'm --

3 A. Well, remedial investigations are
4 conducted by contractors and people internally
5 within the United -- U.S. EPA. I guess RCRA
6 investigations of facilities are conducted by State
7 RCRA officials. Investigations into criminal
8 activity is done by our criminal investigations
9 branch. Investigations like depositions and that
10 kind of thing is conducted by ORC.

11 I mean, I probably just touched
12 the iceberg of what kinds of investigations.

13 Q. Well, I'm going to be very specific
14 about this.

15 Mr. Brewton gave the EPA an
16 Affidavit which formed a part of the record. You
17 are aware of that; are you not?

18 A. Well, can you tell me what Mr. Brewton
19 said?

20 Q. Sure. Let me pull out -- well, I
21 don't have to pull it out. Page 12 of the order,
22 are you familiar with that?

23 A. Um-humn.

24 Q. If you'll take a look at that, there's

1 a reference there to a Mr. Claude Brewton. Do you
2 want to read that portion on page 12?

3 A. Okay.

4 Q. Does that assist you?

5 A. Yes.

6 Q. How did that Affidavit based on your
7 knowledge of the procedure within your Department
8 happen to be obtained?

9 A. I don't know precisely how that was
10 obtained.

11 Q. Do you have --

12 A. I mean for this specific Affidavit, I
13 wouldn't --

14 Q. All right. Would Mr. Dalga have
15 obtained that information, or would Jan Carlson have
16 obtained that information, or what would be the
17 usual way in which that information would come to
18 EPA?

19 A. I'm not that familiar with takings of
20 Affidavit to be able to answer your question.

21 Q. Do you have any idea -- well, you did
22 indicate to me that you knew that there were
23 investigators that work for the EPA?

24 A. Yes.

1 Q. This would be sort of a fact finding
2 mission; would it not?

3 A. Yes, I assume.

4 Q. Do you have any idea then how EPA came
5 upon this information?

6 A. They took an Affidavit from Mr. --
7 apparently, according to the order, they took an
8 Affidavit from Mr. Brewton and Mr. Berkshire, and
9 that's how they got the information, whatever those
10 two persons said.

11 Q. Well, who would be the likely person
12 based on your understanding of the scheme of
13 things --

14 A. You're asking me to -- you're asking
15 me to like -- what's the word, conjecture?

16 MR. JAFFE: Speculate.

17 THE WITNESS: Speculate, that's the word.

18 BY MR. CUNNINGHAM:

19 Q. What's your best judgment?

20 A. My best speculation?

21 Q. You told me you don't know for sure,
22 but give me some assistance, just like I'm a tax
23 payer, and I want to know how did you get that
24 information?

1 A. How did the EPA get this information?

2 Q. Yes, right.

3 A. As I said, we have a number of
4 investigators.

5 Q. Help me with that because --

6 A. It could have been as a result of some
7 criminal investigation, or it could have been the
8 result of some civil investigation.

9 Q. The purpose is I want to find out who
10 it was, and I want to ask them, see.

11 A. Well, if you want to know who it was,
12 ask me, "Chuck, do you know who took these
13 Affidavits?"

14 Q. I asked you that and --

15 A. And what did I say?

16 Q. You don't know.

17 A. Then I don't know. I mean, we can
18 beat around the bush here a long time. I'm telling
19 you I do not know --

20 Q. You've done an excellent job of that.

21 A. -- who took the Affidavits.

22 Q. I'm sorry?

23 A. I told you I do not know who took the
24 Affidavits.

1 Q. Well, I'm asking you as the RPM --

2 A. Remedial project manager, yes.

3 Q. -- who you think did it?

4 MR. JAFFE: I think he's answered that there
5 is such a wide spectrum of people who could have
6 done it, and since he doesn't know the answer --
7 BY MR. CUNNINGHAM:

8 Q. Narrow it down for me; I guess that's
9 what I'm saying. Who is the likely individual who
10 would have that responsible in that area?

11 A. That information could have come from
12 a number of routes to our agency, and you're asking
13 me to speculate or give you a likely candidate as to
14 who that was, and I can't do that for you. I am
15 sorry.

16 Q. You're totally unable?

17 Have you reviewed the documents
18 that were turned over to us yesterday by the
19 Government?

20 A. Have I reviewed each and every
21 document that has to do with this site? No.

22 Q. Just in general?

23 A. I can review them now, if you want.

24 Q. Wouldn't this have been Mr. Dalga's

1 responsibility area, getting the Affidavit of
2 Brewton?

3 A. I do not know.

4 Q. Why don't you know?

5 A. Why don't I know if this was his
6 responsibility, to get an Affidavit? Frankly, I as
7 an RPM have never had to take an Affidavit from
8 someone, and it's --

9 Q. Do you know how the information was
10 obtained from Mr. Berkshire?

11 A. No.

12 Q. Other than the two witnesses that are
13 indicated on page 12, Brewton and Berkshire, what do
14 you know about them? I mean, what did they actually
15 say? Do you have an independent recollection of
16 that?

17 A. No.

18 Q. It's my understanding that the EPA has
19 information that some persons --

20 Q. Yes.

21 A. -- witnessed or knew of information of
22 a release --

23 Q. Go ahead.

24 A. -- of hazardous substances at this

1 site.

2 Q. And that's what's stated on page 12,
3 right, the carbon tetrachloride spill, according to
4 Mr. Brewton, and the TCE, let's see here.

5 A. Well, according to what it says on
6 page 12 is Mr. Brewton in his Affidavit of January
7 2nd, 1990, identifies a significant carbon
8 tetrachloride spill that occurred at the southern
9 end of the main classification yard along Track 69
10 during Penn Central Transportation Company's
11 ownership and operation.

12 "Both EPA and GTI," which is
13 Groundwater Technology, Incorporated -- is that
14 right -- "investigations in the area around Track 69
15 as discussed above revealed presence of high levels
16 of carbon tetrachloride in this area.

17 "Mr. Berkshire, former employee
18 at the railyard, also revealed a practice a little
19 over ten years ago at the car shop area where drums
20 of de-greaser were poured onto concrete pads and
21 then hosed down. Both Track 69 and the car shop
22 area are located within the upgraded portion of the
23 northwest contamination area."

24 Q. Other than those two references, was

1 there any other proof of the connection of my
2 client, Penn Central, to the Elkhart contamination
3 that you know of?

4 MR. JAFFE: I'm going to object to that on
5 the grounds of work product.

6 MR. CUNNINGHAM: No. I'm asking him his
7 knowledge. He made the decision to issue the
8 Unilateral.

9 BY MR. CUNNINGHAM:

10 Q. And I'm asking you a very serious
11 question now, and that is other than these two
12 pieces of information, what did you rely on to tie
13 my client into this site?

14 MR. JAFFE: First of all, just for
15 clarification, there's been no --

16 MR. CUNNINGHAM: I want -- it was his
17 decision. He made the decision. He stated it and I
18 want to know --

19 MR. JAFFE: First of all, he did not make the
20 decision.

21 MR. CUNNINGHAM: That's what he said.

22 MR. JAFFE: I don't think he said that.

23 MR. CUNNINGHAM: I do.

24 MR. JAFFE: Well, be that as it may, for

1 clarification, I don't think he said that. We can
2 look back at the record, but the decision was made
3 by I believe Val Admkus, the regional administrator,
4 and that's who it's signed by.

5 THE WITNESS: It's signed by Bill Munro,
6 M-u-n-o.

7 MR. JAFFE: Oh, I'm sorry.

8 BY MR. CUNNINGHAM:

9 Q. Is he still with the EPA?

10 A. Yes.

11 Q. And what's his title?

12 A. What the hell is his title? I believe
13 he's acting waste management division director.

14 Q. Here in Chicago?

15 A. That's correct.

16 Q. Now, tell me whether there's any other
17 information that you had to rely on to issue the
18 Unilateral other than these two pieces of
19 information.

20 MR. JAFFE: I would object, but I'll let you
21 answer.

22 THE WITNESS: You're going to allow me to
23 answer?

24 MR. JAFFE: Yes. I am going to object, and

1 I'm going to allow you to answer.

2 MR. CUNNINGHAM: Go ahead.

3 THE WITNESS: What was the question?

4 MR. CUNNINGHAM: Go ahead. Read him the
5 question back.

6 (Question read)

7 MR. JAFFE: Let me make clear what I'm going
8 to let him answer.

9 I object to anything outside of
10 the record that has to do with your reasons for
11 issuing the record; if you have any other -- and any
12 information that you may have related to the
13 litigation or enforcing that order. If you have any
14 other information that's outside those two areas,
15 you may answer.

16 THE WITNESS: No.

17 MR. JAFFE: Okay.

18 THE WITNESS: The answer is no.

19 BY MR. CUNNINGHAM:

20 Q. I think that you had previously
21 testified that the Elkhart problem began to surface
22 about 1986; is that right?

23 MR. LAMBERT: I object. I don't think that's
24 the way he put it. I think that was the way you put

1 it when you asked him the question.

2 BY MR. CUNNINGHAM:

3 Q. All right. Well, you put it whatever
4 way is the way it was.

5 A. Well, we can repeat what -- I mean, we
6 can go back and find what I said in answer to that
7 question.

8 Q. I am sorry. I just don't recall what
9 you said. If you don't mind repeating it, it would
10 help.

11 A. Well, I don't remember what I said.
12 If you want an accurate statement of what I said, I
13 suggest we look through the transcript and find out
14 precisely what I said.

15 MR. CUNNINGHAM: Let's go off the record.

16 (Discussion had off record)

17 BY MR. CUNNINGHAM:

18 Q. I think that your previous testimony
19 had a reference to July of 1986 when one of the
20 consultants found TCE, a high level of -- a high
21 level of TCE in the ground.

22 Do you recall having stated that?

23 A. I recall saying, "The EPA slash TAT
24 also conducted an inspection of the Conrail site in

1 July and August of 1986. Seven water slash liquid
2 samples and twenty-one soil samples were collected
3 at Conrail site on July 31st and August 1st of
4 1986."

5 Q. That's fine. That's sufficient.

6 A. Okay. To the best of my recollection,
7 that's what I had said.

8 Q. And do you recall when Penn Central
9 was first notified of a problem in Elkhart?

10 A. Do I know the date?

11 Q. Approximately?

12 A. No, I do not. It might be here in the
13 Record of Decision if you want to see it.

14 Q. All right. If I would suggest 1991,
15 would that assist you?

16 A. It might assist me more if I may
17 review the record.

18 Q. Sure. You're welcome to do that.

19 A. Thank you.

20 Could you ask me your question
21 again, please?

22 (Question read)

23 THE WITNESS: I mean, I don't have -- I don't
24 know that date. I thought it might be in the Record

1 of Decision.

2 BY MR. CUNNINGHAM:

3 Q. So you don't have any recollection of
4 when Penn Central was first notified?

5 A. That is correct. Perhaps the
6 Unilateral tells us that. I know that the
7 Unilateral was sent to both Penn Central and
8 Conrail. Does that help?

9 Q. All right. If you don't know, you
10 don't know.

11 The decision on the part of the
12 EPA to file the lawsuit against Conrail in 1990, did
13 you play a part in that at all?

14 MR. JAFFE: I object except as to a "yes" or
15 "no" answer. I instruct him not to answer except as
16 to a "yes" or "no" answer.

17 THE WITNESS: What was the question?

18 BY MR. CUNNINGHAM:

19 Q. Did you assist in any way the
20 Government in the decision to file the suit against
21 Conrail in 1990?

22 A. No.

23 Q. Okay. Apparently there was an ongoing
24 investigation with regard to Conrail between 1986

1 and 1990; is that correct?

2 A. "On September 30 of 1988, the U.S. EPA
3 entered into a contract to have a RIFS, Remedial
4 Investigation Feasibility Study, conducted at the
5 Conrail site." The work plan for the RIFS was
6 approved in July of '89, and the actual
7 investigations at the Conrail site began shortly
8 thereafter, and those investigations are now
9 continuing.

10 Q. Okay. Let me just look here and see
11 if there are any other questions I may have.

12 I think there are no further
13 questions at this time, but I reserve the right to
14 take a further deposition at a later time, and also
15 we have the understanding that Mr. Dalga and Janet
16 Carlson also await further -- not further, a
17 deposition.

18 MR. JAFFE: On what grounds do you reserve
19 the right to take a later deposition?

20 MR. CUNNINGHAM: Well, I think we're entitled
21 to a further -- for the files, you've indicated
22 there are files that aren't here, and that would be
23 one basis, and I think that's sufficient.

24 MR. JAFFE: If you request documents and we

1 produce documents, you may reserve the right to
2 preserve to take a further deposition on those
3 documents, yes.

4 MR. CUNNINGHAM: I've given you my basis. I
5 have no further questions.

6 MR. LAMBERT: Can we take a break?

7 (Short recess taken)

8 CROSS EXAMINATION

9 BY MR. LAMBERT:

10 Q. Let me ask you a few questions,
11 Mr. Wilk, first about things that Mr. Cunningham
12 asked you about in no particular order.

13 First of all, in your discussion
14 of a cite with -- you were paraphrasing the Record
15 of Decision I think when you referred to there being
16 a 1 in 10,000 risk of excess cancer cases because
17 the drinking water exceeded the NCL for TCE and
18 carbon tet.

19 Do you recall the subject matter
20 of your discussion with Mr. Cunningham on that
21 subject?

22 A. I recall it. I don't know where
23 you're going but --

24 Q. Well, don't worry about where I'm

1 going.

2 A. Well, no. I do have to worry about
3 it.

4 Q. Just take one question at a time.

5 A. I'm just concerned if you're making
6 statements about something that I had said and
7 paraphrasing what I've said --

8 Q. As a practical matter, it's impossible
9 to have it read back.

10 A. Well, you can understand my hesitancy
11 in answering the question.

12 Q. Fine.

13 Do you recall words to the effect
14 that the ROD identified a risk of one times ten to
15 the minus fourth?

16 A. I do not.

17 Q. You don't remember that?

18 A. No.

19 Q. Okay. Do you remember providing us
20 with some statistic or other with respect to the
21 excess cancer risk associated with drinking water
22 from the site or from the area downgrading the site?

23 A. What I said was that contamination --
24 that contaminants in the groundwater exceed NCL.

1 Q. Right. And do you recall --

2 A. And I tried to use -- I was answering
3 Mr. -- Pierce's question as far as what is imminent
4 risk and that kind of thing and how do we figure out
5 what's an endangerment or not, and I was trying to
6 explain the risk range that we use. And generally
7 in exceedence (sic) of an NCL means you're above
8 10,000, above ten to the minus fourth additional
9 cancer risk.

10 Q. And the only thing I want to clarify
11 is that that is a risk that is calculated on
12 assumptions with respect to how much water you drink
13 and the period of time for which you drink it; isn't
14 that correct?

15 A. When we -- when we give someone a
16 risk, when we quantify a risk, in order to do that
17 quantification, we look at consumption and pattern
18 of the amount of time people drink it, and in this
19 case -- in cases such as this of groundwater
20 contamination, people using that groundwater for
21 bathing, you also have inhalation and that kind of
22 thing, and there's a big guidance document that
23 talks about how that calculation is done.

24 I do not want you to -- I do not

1 want the record to say that the EPA had quantified
2 the risk at the site to be greater than ten to the
3 minus fourth because that's not what the Record of
4 Decision says.

5 Q. My only question is this -- you're
6 fighting with me too much here.

7 What the record says, as you
8 testified before, is that that risk, whatever the
9 quantification was that is on the record of this
10 deposition is the risk associated with drinking
11 water from the site. And I think that somebody
12 reading that would believe simply reading the record
13 that if you took a cup of that water and drank it,
14 that was the cancer risk associated with that act.

15 And what I wanted you to agree
16 with me on is that that is a risk, whatever that
17 risk is that's associated with drinking that water
18 for some period of time, some amount per day; that's
19 all. Will you agree with that?

20 A. Yes, I would agree with that.

21 Q. Fine.

22 What did you do at the Portland
23 Cement Construction Technology Lab?

24 A. Portland Cement Association

1 Construction Technology Laboratory, I started there
2 as a laboratory technician and through successive
3 promotions became an associate research chemist.

4 We did research on -- research on
5 the manufacture of Portland cement, how to improve
6 Portland cement or how to improve the processes of
7 Portland cement or how to incorporate waste into the
8 manufacture of Portland cement.

9 Q. Did you work there about two years; is
10 that right? I lost track of the chronology.

11 A. I worked there for seven years.

12 Q. For seven years, okay.

13 So that would put you at EPA
14 around 1985?

15 A. That's right. I started at EPA in
16 September of 1985.

17 Q. Did I understand correctly when I
18 heard you say that -- when I thought I heard you say
19 that the first job you had there was in connection
20 with the RCRA program?

21 A. The first job I had at U.S. EPA --

22 Q. Right.

23 A. -- was in connection with the Research
24 Conservation Recovery Act program, that's correct.

1 Q. And in more particularly in connection
2 with the State authorization program?

3 A. That's correct.

4 Q. How long did you do that for?

5 A. Two and-a-half years.

6 Q. Until approximately when?

7 A. Two and-a-half years after September
8 of '85.

9 Q. So sometime in 1988?

10 A. Um-humn, that's correct.

11 Q. And then after that you became a RCRA
12 permit writer for some period of time?

13 A. That's correct.

14 Q. And when did you do that until?

15 A. I was a RCRA permit writer for a year
16 and-a-half.

17 Q. Until about when?

18 A. A year and-a-half after the time I
19 started so -- I'm sorry. I mean, I can sit here and
20 calculate out the dates. I'm assuming that you can
21 do that, too.

22 Q. I don't think if -- if you told me
23 what month you ceased being -- what month you ceased
24 being a state authorization program person, I could

1 do that, too, but I didn't hear you say that.

2 A. So what's the question?

3 Q. Let's go back to the beginning, and
4 you tell me when you --

5 A. I can tell you the chronology of my
6 work at the EPA. Would that help you?

7 Q. Okay. And the dates in which you
8 began.

9 A. Okay. I started EPA on September of
10 1985, and I worked in the Research Conservation
11 Recovery Act program in the regulatory development
12 or State authorization because the name changed. In
13 as near I can figure in March of '88 I became a RCRA
14 permit writer. In September of '89 I became a
15 CERCLA RPM. And in June of 92 -- sorry, in
16 September of '89 I started with the
17 Michigan/Wisconsin branch. And in June I started --
18 I transferred to the Illinois/Indiana branch, first
19 section, whatever you want to call it.

20 Q. Okay. Mr. Cunningham asked you what
21 sort of training you received to become an RPM, and
22 you mentioned that you had attended an academy,
23 Super Fund Academy, within EPA; is that correct?

24 A. Well, he asked me what kind of

1 training outside of having a B.S.

2 Q. Right.

3 A. Okay. Because by virtue of just
4 having a B.S., I was qualified to be a remedial
5 project manager.

6 Q. Is that correct?

7 A. That is correct.

8 Q. An EBS?

9 A. Pardon?

10 Q. An EBS degree qualifies you to be a
11 remedial project manager?

12 A. A Bachelor of Science degree in
13 physical sciences would put you at a remedial
14 project manager probably at the lowest level.

15 Q. When you became a remedial project
16 manager, you started doing things that you hadn't
17 done at the EPA?

18 A. That's incorrect.

19 Q. Have you done everything before that
20 you are now doing at the EPA?

21 A. No.

22 Q. You started doing new things of some
23 sort; did you not?

24 A. That's correct.

1 Q. Had you worked with the National
2 Contingency Plan before?

3 A. No.

4 Q. That was new, correct?

5 A. Yes.

6 Q. What training did you have to become a
7 remedial project manager inside of EPA?

8 A. As you might know, the CERCLA relies a
9 great deal on other programs, other regulatory
10 programs including RCRA. RCRA is one of the biggest
11 or the biggest volume of A-rise (phonetic) that you
12 see in the CERCLA program comes from RCRA. So by
13 virtue of the fact that I was quite familiar with
14 the RCRA statutes and RCRA regulations and State
15 RCRA-type statutes and State RCRA-type regulations
16 helped me with becoming an RPM.

17 I had a number of -- I had a
18 number of training courses with the EPA on RCRA. I
19 had a number of courses on enforcement, which also
20 translates into things I need to do as an RPM within
21 the EPA. I had courses on RCRA orientation. That
22 may have been before I became an RPM; I'm not
23 certain of that.

24 And with bringing all of these

1 things to the position of RPM, I was hired to be an
2 RPM with absolutely no reservations within the
3 CERCLA program that I was not qualified -- that I
4 was or wasn't qualified to be an RPM. I was
5 qualified to be an RPM.

6 One of the things that the CERCLA
7 program does, at that time for RPMs, there was an
8 RPM Academy that taught a great deal. Well, I mean
9 it basically taught people, new RPMs, on how to be
10 an RPM. A number of those courses like contact
11 administration -- aspects of that academy like
12 contract administration, negotiation training,
13 enforcement, RCRA type stuff I already knew before I
14 became an RPM, so subsequent to being an RPM now,
15 I've gone to the academy. I've continued to take
16 coursework in the Agency.

17 Q. When you became an RPM, had you ever
18 managed either remedial investigation or an RFI
19 under RCRA?

20 A. I conducted visual site inspections
21 under RCRA, remedial facility assessments under
22 RCRA. I wrote corrective action -- what do you call
23 them? Corrective action requirements in hazardous
24 waste management facility permits.

1 Q. The answer to my question is no, is it
2 not?

3 A. Repeat your question.

4 Q. Have you ever managed a remedial
5 investigation or an RFI, which is the RCRA
6 equivalent for remedial investigation; is it not?

7 A. I have -- well, I guess no.

8 Q. Okay. I lost my place.

9 What training have you had with
10 respect to conducting or managing a Super Fund
11 remedial investigation?

12 A. What training? As I just told you, I
13 just went through all of that training. Do you want
14 me to repeat that or --

15 Q. Well, let me rephrase my question.

16 A. Thank you.

17 Q. Have you had any training that has
18 been specifically related to conducting a Super Fund
19 remedial investigation?

20 A. Yes.

21 Q. What's that?

22 A. There was coursework in the Super Fund
23 academy that taught me that.

24 Q. What was the subject matter of the

1 coursework, just generally speaking?

2 A. Of how to do a remedial investigation?

3 Q. Right.

4 A. Would be how to do a remedial
5 investigation.

6 Q. Fine.

7 Was that a course that you took
8 sometime in 1989? Is that part of the course that
9 you took in 1989?

10 A. '89 and '90.

11 Q. When was the first time that you
12 became an RPM for Super Fund sites?

13 A. In September of '89.

14 Q. Can you give me some estimate of the
15 number of Super Fund sites for which you've been an
16 RPM?

17 A. Five.

18 Q. Can you identify them, please?

19 A. Kentwood Landfill in Kentwood,
20 Michigan; City Disposal Corporation Landfill in
21 Wisconsin; Hechimovich Landfill.

22 Q. Would you spell that, please?

23 A. Just how it sounds,
24 H-e-c-h-i-m-o-v-i-c-h or something like that.

1 Q. Hechimovich?

2 A. Hechimovich.

3 Q. Hechimovich Landfill?

4 A. Right. Conrail Railyard; Continental
5 Steel. Continental Steel is in Kokomo, Indiana.

6 Q. Did any of those sites involve
7 remediation pursuant to a Section 106 Order?

8 A. 106 is the Unilateral?

9 MR. JAFFE: Um-humn.

10 THE WITNESS: Conrail is the first one.

11 BY MR. LAMBERT:

12 Q. Have any of those sites -- strike
13 that.

14 Can you tell me what period of
15 time you were an RPM?

16 A. Can I say that, too, "strike that,"
17 and it gets stricken from the record?

18 Q. If you want to change what you said,
19 it's okay.

20 A. I'm just not familiar with this thing.
21 And I notice when you say, "Strike it," she
22 continues to write it, and it will be on the
23 transcript, and it will say "Stricken"?

24 Q. Right.

1 A. It won't be omitted from the
2 transcript?

3 Q. That's right.

4 A. Okay.

5 Q. Can you tell me what years you were an
6 RPM for each of those sites, please?

7 A. Okay. Let's see. For Kentwood
8 Landfill, from late '89 through June of '92;

9 For City Disposal Landfill, from
10 late '89 to June of 92;

11 For Hechimovich, late -- well,
12 early '90 through June of '92;

13 For Conrail, June of '92 to
14 present;

15 For Continental Steel, June of
16 '92 to present -- or actually, I'm sorry. Yeah,
17 Conrail might have been signed a little later. It
18 might have been September-ish of '92.

19 Q. Have any of the Super Fund sites been
20 -- have involved remedial design activities during
21 your tenure --

22 A. Yes.

23 Q. -- as project manager other than
24 Conrail?

1 A. Yes.

2 Q. Which ones, please?

3 A. Kentwood and -- Kentwood and probably
4 Hechimovich. It depends.

5 Q. In what sense was Hechimovich in
6 remedial design?

7 A. In that the State was doing a cover of
8 the site.

9 Q. Was there a PRP person -- PRP entity
10 or PRP group that was responsible for the remedial
11 design at Kentwood, or was that --

12 A. Yes. It was a PRP.

13 Q. Or was --

14 A. Well -- I'm sorry. I jumped to my
15 answer.

16 Q. Well, that's fine. But was a PRP
17 done?

18 A. If you ask me whether or not the
19 remedial design was being conducted by PRPs, the
20 answer is yes.

21 Q. Was there a group of PRPs, only one or
22 what?

23 A. There was one.

24 Q. What was the name of that PRP, please?

1 A. It's the City of Kent -- well, I'm
2 sorry; there are two, the City of Kentwood and the
3 County of Kent, so there were two PRPs.

4 Q. And what about Hechimovich; who was
5 responsible for the design, the State did you say?

6 A. The State was working with the PRPs,
7 and the PRPs were the Hechimoviches who were the
8 owners and operators at the site.

9 Q. Was that a U.S. EPA lead site?

10 A. It was a state lead.

11 Q. Was Kentwood Landfill a state lead
12 or --

13 A. Fed. lead, Federal lead. City
14 Disposal is also a Federal lead site.

15 Q. But City Disposal has not involved any
16 remedial design work as of yet?

17 A. I wrote the Record of Decision on City
18 Disposal, so we aren't at that part yet.

19 Q. Who do you report to at Region 5 with
20 respect to Elkhart?

21 My real question is what's the
22 reporting chain upwards with respect to Elkhart?

23 A. My first assigned supervisor's name is
24 Kerry Street. His supervisor would be Rick Karl.

1 Q. Karl?

2 A. Rick Karl.

3 Q. K-a-r-l?

4 A. K-a-r-l, that's correct.

5 Q. What's his position?

6 A. He is Illinois/Indiana branch chief.

7 Q. And do you know who Mr. Karl's
8 superior is?

9 A. Well, at present, it would be Connie
10 Pachowski (phonetic). She's acting -- well, there's
11 a lot of people who are acting right now for things
12 because everyone is -- that management chain is
13 pretty -- there's a lot of people acting in it, so I
14 think it would be Connie who would report to Jodie
15 Traub, who I think reports to right now Bill Muno.

16 Q. What is Jodie Traub's acting title?

17 A. I think she's acting -- what do they
18 call that, associate or assistant division director.
19 She is responsible for the Super Fund program
20 currently, and she reports to William Muno, who is
21 responsible for -- who is also acting who is
22 responsible for the Waste Management Division, which
23 includes RCRA and CERCLA.

24 Q. Earlier when Mr. Cunningham asked you

1 about the duties of the remedial project manager,
2 you were reading from something. I presume it was
3 the National Contingency Plan?

4 A. That's correct.

5 Q. You mentioned a number of
6 responsibilities, and there were some others that
7 you didn't mention. They appear to maybe be
8 responsibilities. I wanted to check them with you.

9 Is it correct that one of your
10 jobs as a remedial project manager is to coordinate
11 and oversee private parties' responsibilities?

12 A. That's correct, but I believe that
13 what I had stated into the record included that.

14 Q. Well, then I must have missed it.

15 A. We can read it again.

16 Q. It's quite okay.

17 You do recognize that is one of
18 your responsibilities, however; is that correct?

19 A. And as I stated, it is there. Let's
20 see. It's right here.

21 "For Fed. lead non-fund finance,"
22 which I think is what you're asking about, "the RPM
23 coordinates, directs and reviews the work of other
24 agencies, responsible parties and contractors to

1 assure compliance with the NCP, Record of Decision,
2 Consent Decree, Administrative Order and lead Agency
3 approved plans applicable to the response."

4 Q. You review and improve work plans; do
5 you not?

6 A. Yes, I do.

7 Q. And you review and improve reports
8 prepared by the contractor that's hired by EPA with
9 regard to the sites that are under your supervision?

10 A. That's correct.

11 Q. The RPM is the point of contact
12 between private parties who are performing either a
13 remedial investigation or remedial design activity
14 and the EPA; is that correct?

15 A. That's correct in the respect that
16 when we're talking about technical issues. But when
17 we're talking about legal issues, the point of
18 contact -- if an attorney were to contact someone in
19 the EPA about a specific site, he should be
20 contacting the attorney for the site.

21 Q. Do you agree that it is part of an
22 RPM's job to keep private parties who are conducting
23 remedial activities informed?

24 A. I guess informed of what? Can you

1 clarify what you're asking?

2 Q. Informed with respect to their
3 responsibilities on the site and informed with
4 respect to Agency decision making with respect to
5 their activity on the site.

6 A. It's my responsibility to let the
7 public know what's going on at the site, and the
8 PRPs are members of the public in that regard.

9 Q. Does it ring a bell that the -- in
10 your mind that the NCP contemplates that the RPM
11 keeps private parties who are performing response
12 actions informed with respect to decision making
13 with respect to the site?

14 A. Can you repeat your question?

15 MR. LAMBERT: Can you read it back?

16 (Question read)

17 THE WITNESS: Well, it would certainly not be
18 -- well, does it ring a bell that the NCP says that?

19 BY MR. LAMBERT:

20 Q. Says something about that?

21 A. No, it does not ring a bell. If you
22 could tell me the citation, I can certainly find it.

23 Q. Does it ring a bell that the NCP
24 contemplates that the remedial project manager will

1 insure that the concerns of the PRPs who are
2 conducting response activity will be considered to
3 the extent practicable? Does it ring a bell?

4 A. Well, what do you mean "ring a bell"?
5 Can I tell you where it is in the NCP?

6 Q. No. Is it in the NCP?

7 A. I don't know.

8 Q. Okay.

9 A. Actually, I don't remember. That
10 should be my answer is I don't remember unless I --
11 I mean, I notice that you were going through the NCP
12 there. Perhaps you can find the citation for me.

13 Q. I can find the citation.

14 A. Well, do you want to find it, and I
15 can look at it?

16 Q. I want to know whether or not you
17 consider that to be part of your responsibilities on
18 the site that you manage.

19 A. In a general sense, yes. I am
20 certainly not going to disclose to PRPs any part of
21 our enforcement strategy or anything that is
22 considered privileged between my attorney and
23 myself.

24 I would not afford potential

1 responsible parties -- give them any more deference
2 than I would any member of the general public for
3 information concerning this site.

4 I am rather curious, and maybe
5 perhaps sometime you can show me that citation
6 because I am interested in it.

7 Q. What role does U.S. EPA guidance stock
8 play in carrying out your responsibilities as a
9 remedial project manager?

10 A. They guide us on our responsibilities
11 as remedial project managers on the site.

12 Q. Does the EPA guidance on conducting
13 remedial investigations and feasibility studies
14 guide you in connection with performing
15 investigations of the Elkhart site?

16 A. Well, the guidance document, if I
17 needed to have some information on something, I
18 would look at the guidance document if I felt it
19 necessary to do so.

20 Q. Do you consult guidance documents when
21 you're performing your role as remedial project
22 manager with respect to remedial investigations?

23 A. Yes, I do.

24 Q. And also the NCP?

1 A. Yes, I do.

2 Q. Have you had any responsibilities for
3 the preparation of any work plan associated with the
4 Conrail site?

5 A. Could you repeat that? I am sorry.

6 Q. Have you had any responsibilities in
7 connection with the preparation or approval of a
8 work plan associated with the Conrail site?

9 A. Yes.

10 Q. Can you tell us what that is, please?

11 A. Could you tell me which work plan you
12 mean?

13 Q. Whatever responsibilities you've had
14 in connection with the work plan.

15 A. As I told Mr. Cunningham, I have
16 reviewed the work plan submitted by Conrail for the
17 conduct of the remedial design and remedial action
18 under the interim in response to the Unilateral
19 order that we issued to Conrail.

20 Q. Any other work plans?

21 A. Pardon?

22 Q. Any other work plans?

23 A. For Conrail?

24 Q. Yes.

1 A. The remedial design oversight work
2 plan that was submitted by our oversight contractor
3 to perform the oversight of the RDRA that's being
4 conducted by Conrail, and the work plan that is
5 currently being developed -- it's not final -- on
6 the third phase of the remedial investigation
7 feasibility study being conducted at Conrail under
8 contract by -- from us to Ecology and Environment,
9 Inc.

10 Q. What's the role of the remedial
11 investigation work plan?

12 A. The role of the remedial investigation
13 work plan? Whether you're talking about under --
14 for when it's fund leads that we're giving to our
15 contractor is to define how the RI is going to be
16 conducted for the EPA.

17 Q. Would it be fair to say that its
18 function is to define the scope and objectives of
19 the remedial investigation?

20 A. Yes.

21 Q. And is that also the objective of the
22 work plan for Phase 3 of the remedial investigation
23 at Elkhart?

24 A. Yes.

1 Q. Do you know whether there are any NCP
2 provisions that deal with the preparation of the
3 remedial investigation work plan?

4 A. I don't think there is.

5 Q. Do you know whether there are any EPA
6 guidance documents that deal with the preparation of
7 the remedial investigation work plan?

8 A. I don't believe that there is a
9 specific guidance on that. There's a guidance on
10 remedial investigation feasibility studies that may
11 talk about how to write the work plan.

12 Q. Is there? Is there a section in the
13 remedial investigation feasibility study guidance
14 that deals with --

15 A. I don't recall.

16 Q. Is there any guidance document that
17 you can identify for us that does provide you with
18 advice as to how to manage the preparation and how
19 to decide whether to approve a remedial
20 investigation work plan?

21 A. There's a guidance document that tells
22 us what we need to find -- not what we need to find
23 but what we should be looking for when we're at a
24 site when we're doing a remedial investigation.

1 Q. What's that?

2 A. And I guess you could go backwards
3 from that saying that that provides you guidance on
4 what a work plan should contain.

5 Q. What guidance document are you
6 referring to?

7 A. The remedial investigation feasibility
8 study guidance.

9 Q. Is there any guidance document which
10 defines the elements of a remedial investigation
11 work plan?

12 A. I don't recall.

13 Q. Have you ever heard of the phrase
14 sampling and analysis plan?

15 A. Yes.

16 Q. Sometimes referred to as an SAP?

17 A. Yes.

18 Q. Is there any guidance document that
19 you can identify that explains to you as a remedial
20 project manager how an SAP is to be prepared?

21 A. I don't know. I mean, this
22 information about guidance documents and whether
23 something is available from the Agency is easily
24 found, and we have catalogues on Super Fund

1 guidance, so if you're interested in that, I'd be
2 glad to get you a copy of that.

3 Q. I'm familiar with the catalogue. I'm
4 also familiar with the guidance document, and I'm
5 trying to find out whether you are.

6 You said that you're in the
7 process of approving a remedial investigation work
8 plan for the third phase of the Conrail remedial
9 investigation; is that correct?

10 A. That's correct.

11 Q. What sources are you taking into
12 account in deciding whether or not to approve
13 whatever it is that's been provided to you I take it
14 in draft form?

15 A. Do you want me to name the specific
16 sources?

17 Q. Yes.

18 A. I couldn't recall all the sources.

19 Q. Have you consulted any sources?

20 A. Like from day-to-day what needs to be
21 there?

22 Q. That's right.

23 A. I've consulted with the NCP.

24 Q. What did you find in the NCP with

1 respect to sampling and analysis plans or remedial
2 investigation work plans?

3 A. I don't recall.

4 Q. What is the status of the remedial
5 investigation work plan for the third phase?

6 A. It has not been approved yet.

7 Q. Has it been drafted?

8 A. Yes.

9 Q. A first draft or second draft?

10 A. It's in the second draft.

11 Q. Did you review the first draft?

12 A. Yes, I did.

13 Q. Did you comment on it?

14 A. Yes, I did.

15 Q. And you can't --

16 A. And a number of other people commented
17 also. My job as an RPM is not to be the sole
18 reviewer of a work plan.

19 Q. I take it that when you reviewed it,
20 you did not compare it to any Agency guidance
21 document to see whether or not they contained the
22 elements that were required by any such guidance
23 document; is that correct?

24 A. Guidance does not require things.

1 Regulations require things. Guidance is guidance.

2 Q. Am I correct that -- am I correct that
3 when you reviewed it, you did not refer to any
4 Agency guidance document to guide you in deciding
5 whether or not to approve it?

6 A. Or disapprove it?

7 Q. Or disapprove it.

8 A. I don't recall.

9 Q. How long ago did this happen?

10 A. This approval probably happened a
11 month and-a-half ago.

12 Q. And you don't remember whether you
13 alluded to any guidance documents?

14 A. I know I referenced the NCP in some of
15 my comments to it.

16 Q. Right. And you just told us that's
17 not a guidance document; it's a regulation.

18 A. It's a requirement, right.

19 Q. You don't remember whether you alluded
20 to any guidance document; is that correct?

21 A. I don't believe that my comments
22 included any citations to guidance documents saying,
23 "You must do this because that's what the guidance
24 says you must do."

1 Q. Do you recall alluding to any guidance
2 documents in approving or disapproving or commenting
3 on the draft that you were provided?

4 A. I'm sorry. Say that again. Didn't I
5 just answer that?

6 Q. No, I don't think so. You dodged it.

7 The question is --

8 A. Well, you're implying that I dodged
9 it.

10 Q. Yes. Did you review any guidance
11 documents when you reviewed -- did you review any
12 guidance documents when you considered the first
13 draft of the work plan?

14 A. And I said --

15 Q. You don't remember?

16 A. -- I don't remember. I mean, I may
17 have.

18 Q. Okay. What is the role of a sampling
19 and analysis plan?

20 A. The role of the sampling and analysis
21 plan?

22 Q. Right.

23 A. It guides the people in the field on
24 how they're going to sample, and it guides the

1 people who are in analyzing on how they're going to
2 analyze the sample.

3 Q. Do you know whether there was a
4 sampling and analysis plan attached to the first
5 draft of the remedial investigation work plan for
6 Phase 3?

7 A. I'd have to -- I need to see the draft
8 to be able to answer that, so I guess the question
9 is -- the answer is I don't recall.

10 Q. Do you know whether or not a sampling
11 and analysis plan for the third phase of the RI has
12 been approved yet?

13 A. I believe it has conditional approval.

14 Q. Who conditionally approved it?

15 A. We have a quality assurance, quality
16 assurance section that does this kind of thing.

17 Q. You're saying that the quality
18 assurance department conditionally approved the
19 sampling and analysis plan?

20 A. Um-humn.

21 Q. Did you conditionally approve the
22 sampling --

23 A. Well, I guess ultimately I would be
24 doing it.

1 Q. Did you do it in this case?

2 A. Yes.

3 Q. So you have reviewed the sampling and
4 analysis plan; is that correct?

5 A. That's correct.

6 Q. And it was part of the remedial
7 investigation work plan that was provided to you in
8 draft; is that correct?

9 A. I don't really know whether it was
10 submitted at the same time or not, but yeah, we must
11 have had it to review.

12 Q. So the sampling and analysis work plan
13 had been approved; is that right?

14 A. Conditionally approved.

15 Q. What is it conditioned upon?

16 A. I don't recall.

17 Q. Whose job is it to condition it, if it
18 was to be conditioned?

19 A. If it needs to be conditioned?

20 Q. Isn't that your job?

21 A. Well, I don't think you quite
22 understand my job.

23 Q. I guess I don't. Explain.

24 A. Sampling and analysis plans are quite

1 technical. I do not -- I'm not saying I'm an expert
2 in sampling and analysis, and so we have people
3 within our agency whose responsibilities it is to
4 review them. And one of those people are quality
5 assurance people, and I rely on their
6 recommendations to me on approving or disapproving
7 that aspect of the project.

8 Q. Isn't it true that the sampling and
9 analysis plan defines with specificity the location
10 from which samples are to be taken?

11 A. It should include locations, yes.

12 Q. Isn't it true that it should --

13 A. I mean, there are judgments in the
14 field that change that but --

15 Q. Isn't it true that a sampling and
16 analysis plan is supposed to specify locations to
17 the extent that somebody who had never been to the
18 site could go out and gather the data from the
19 location and identify them; isn't that right?

20 A. I don't know if that's right.

21 Q. You don't remember seeing that in the
22 guidance document?

23 A. I don't recall seeing it.

24 Q. Do you know whether or not anybody has

1 finally approved the sampling locations for Phase 3
2 of the RI Conrail site?

3 A. I believe we gave conditional approval
4 to them.

5 Q. Did you give conditional approval for
6 the location?

7 A. I don't recall if I wrote a letter on
8 that or not.

9 Q. Did you give conditional approval or
10 not with the location?

11 A. I mean, when you say "give," I'm
12 assuming you want it to be formalized or something.

13 Q. I'd like to know whether you have told
14 anybody that you have -- you as remedial project
15 manager have approved the location from the samples
16 which were taken during Phase 3 of the RI.

17 A. Yes. I have at least verbally
18 approved -- conditionally approved it, and I am
19 quite certain that -- I'm very sure that I wrote a
20 written conditional approval for that.

21 Q. What is the approval conditioned upon?

22 A. It's conditioned upon, as best as I
23 can recall, revisions to the text that will be
24 satisfactory when the revisions are made.

1 Q. To the text of what?

2 A. To the text of the work plan.

3 Q. I'm asking you a question now of the
4 sampling and analysis plan. Has the sampling and
5 analysis plan been approved?

6 A. And as I've stated, it's conditionally
7 approved.

8 Q. And it's been conditionally approved
9 upon the condition that the text of the sampling
10 analysis -- sampling and analysis plan be changed?

11 A. I don't know that. I told you that
12 it's conditioned upon a revision to the work plan.

13 Q. Do you know whether the sampling and
14 analysis plan is final as far as you as remedial
15 project manager is concerned?

16 A. Well, it wouldn't be final until we
17 approved the work plan.

18 Q. Do you anticipate any further changes
19 in the sampling and analysis plan?

20 MR. JAFFE: I think the witness has answered
21 -- the question has been asked several times. I
22 think the witness has answered it.

23 MR. LAMBERT: I think the witness has evaded
24 the answer each time.

1 MR. JAFFE: He said it's conditional
2 approval. And condition upon what; condition upon
3 changes in the work plan.

4 BY MR. LAMBERT:

5 Q. And my question is now do you
6 anticipate any changes in the sampling and analysis
7 plan? It's a separate document. At least it's
8 supposed to be.

9 A. Do I anticipate changes to --

10 Q. Let's go back. I take it that you
11 have requested text changes in the work plan before
12 it's approved; is that right?

13 A. That's to the best of my recollection,
14 yes.

15 Q. Did you request any changes in the
16 sampling and analysis plan?

17 A. I'd have to review my comments to be
18 able to definitively answer your question.

19 Q. What's your best recollection?

20 A. That there probably are changes
21 requested to the sampling and analysis plan, and by
22 virtue of giving them conditional approval, they are
23 probably not of such a monumental scope that would
24 cause us to wait on the project, on the fieldwork.

1 Q. Do you know whether the sampling and
2 analysis plan for the third phase of the RI explains
3 why particular sampling locations have been
4 selected?

5 A. Could you repeat it again? Do I know
6 of --

7 Q. Do you know whether the sampling and
8 analysis plan explains the rationale for the choice
9 of certain locations?

10 A. I don't know if the rationale is
11 there. I don't recall.

12 Q. Has the scope of the third phase of
13 the RI been determined already?

14 A. Yes.

15 Q. Was it -- when was it determined?

16 A. I don't recall.

17 Q. Can you give me your best estimate,
18 please?

19 A. I don't know.

20 Q. No idea? Can you give me a month?

21 A. Probably October-ish.

22 Q. Do you know whether the EPA guidance
23 on remedial investigations requires that a sampling
24 and analysis plan be prepared and approved before

1 field activities occur?

2 A. I don't know that.

3 Q. Isn't it correct that under the EPA
4 guidance on conducting remedial investigations
5 fieldwork should not occur until the work plan has
6 been approved?

7 A. I don't know if that's correct or not.

8 Q. Does either the NCP or EPA's guidance
9 documents say anything about the importance of
10 protecting the safety of EPA's investigation team
11 during the performance of the remedial
12 investigation?

13 Before you look, do you know?

14 A. I prefer to look, if you don't mind.

15 Q. Well, I prefer you to answer my
16 question.

17 A. Well, I'll be able to answer your
18 question if I can look.

19 Q. Fine --

20 A. Thank you.

21 Q. -- I'll take that as the answer.

22 A. You'll take that as the answer?

23 Q. Yes.

24 A. Well, that isn't my answer.

1 Q. Well, you're welcome to look.

2 A. Thank you.

3 Q. What I'm trying to find out is whether
4 or not you know that and are taking that into
5 account without having to allude to the NCP or to
6 the guidance document during the deposition.

7 A. Okay. What I can tell you is between
8 the preamble of the proposed NCP or the preamble of
9 the final NCP or the NCP itself talks about the
10 responsibility of safety of people working at
11 hazardous waste -- at Super Fund sites.

12 MR. JAFFE: Before you ask the next question,
13 I've allowed this line of questioning to go on for
14 some time now, and I'm --

15 MR. CUNNINGHAM: Thank you, your Honor.

16 MR. JAFFE: Well, my point is that -- we've
17 had a lot more important objections that we've been
18 stating today, but I'm a little confused on how this
19 is leading -- this is reasonably calculated to lead
20 to admissible evidence of the case at hand, if you
21 could just explain that to me.

22 MR. LAMBERT: Yes. I think to my
23 understanding is that you're trying to recover costs
24 that have been incurred and will be incurred from

1 us, and the law says you can only recover costs that
2 are incurred consistent with the NCP, and I am
3 exploring with this witness whether or not the costs
4 that relate to the work that he's done on the site
5 thus far has been done consistent with the NCP.

6 MR. JAFFE: Okay. But whether he knows in
7 his head what is consistent -- whether he's
8 memorized the NCP or has to consult it before he
9 makes decisions as to the -- you know, to accept or
10 deny the work plan is completely irrelevant to that.

11 And further, as to past dealings,
12 I completely understand that, but as to things that
13 are not final yet, the only thing we're looking for
14 in the future is the judgment of liability, not that
15 everything we do in the future is going to --

16 MR. LAMBERT: But Peter, I presume that by
17 the time we get to trial the costs that are being
18 incurred this month in connection with the
19 preparation of this work plan will not be future
20 costs; they'll be past costs at that point. And so
21 I feel like I'm entitled to ask about how the work
22 plan is being prepared and whether it's consistent
23 with the NCP and Agency guidance.

24 And I think the relevance of

1 whether the witness knows the answers to my
2 questions without looking at the book is I think it
3 bears upon the question reviewed in retrospect of
4 whether or not the work was done with the NCP. If
5 the witness has to allude to it in order to answer a
6 question like that, I think that suggests that he
7 might not have paid attention or been aware of the
8 rule or guidance at the time the decision is made.

9 THE WITNESS: May I state that I feel that
10 the work we are doing is consistent with the NCP.

11 BY MR. LAMBERT:

12 Q. I'm quite sure you feel that way.

13 A. Okay. And the reason I look through
14 this reference is to be able to provide you an
15 accurate answer to your question.

16 If you do not want accurate
17 answers to your question, then continue like you are
18 with, "Tell me, you know, off the top of your head."

19 And I'm sure even you as an
20 attorney has had a lot of dealings with CERCLA, the
21 statutes and the regulations and cannot cite
22 regulations verbatim, so I mean --

23 Q. No, but -- well, I don't want to get
24 into an argument with you, but I'm not a remedial

1 project manager, and I know the answers to the
2 questions that I'm asking you.

3 A. All right, then tell me. I
4 mean --

5 Q. I'm trying to see if you know the
6 answers to the questions that I'm asking you.

7 MR. JAFFE: I'm not going to cut off your
8 line of questioning or anything like that or
9 instruct him not to answer.

10 MR. LAMBERT: I appreciate that.

11 MR. JAFFE: I'm just stating for the record
12 that I am losing the relevancy of these questions,
13 but you're certainly welcome to go ahead and ask.

14 BY MR. LAMBERT:

15 Q. Have any special steps been taken to
16 protect the safety of people conducting the third
17 phase of the remedial investigation --

18 A. Of course there have.

19 Q. Okay. Can you explain what special
20 steps have been taken that --

21 A. They have a health and safety plan,
22 and they have also contacted Conrail to provide them
23 with pilots and guides to keep their -- keep them
24 safe.

1 Q. Has EPA provided Conrail with the plan
2 showing where samples are to be taken in connection
3 with this phase of the RI?

4 A. They have not been given a copy of the
5 work -- of the draft work plan because it's a draft.

6 Q. Have they been given any --

7 A. No.

8 Q. But people are out on the field taking
9 samples based upon a work plan; isn't that correct?

10 A. That's correct.

11 Q. What is the objection to providing
12 Conrail with a copy showing the locations where
13 samples were taken?

14 A. The objection is it's a draft. It's a
15 draft document, and it's not -- we don't release
16 draft documents to PRPs. I mean I don't release
17 draft documents to PRPs as an RPM.

18 Q. Are you aware that the Conrail yard
19 has various sorts of electrical equipment underneath
20 it?

21 A. Yes.

22 Q. Have you done anything to determine in
23 advance of sending crews out to the site whether or
24 not there's electrical equipment or wires beneath

1 the areas that are going to be sampled?

2 A. Can you say that again? I'm sorry.

3 Q. Have you done anything in advance of
4 sending your crews or crews out to the site to
5 determine whether the areas were --

6 A. We have requested Conrail to provide
7 us with guides and people in the field to be able to
8 determine for us where that is.

9 Q. Where the underground lines are?

10 A. Where anything is, anything that's
11 going on.

12 Q. I mean, is it your testimony that you
13 expect a guide out there on the site to be able to
14 tell you whether or not where you intend to drill a
15 hole is the location of an underground electrical --

16 A. No. My testimony is I expect Conrail
17 to take their responsibility of keeping people on
18 their property safe and healthy and provide guides
19 and pilots or whatever else it takes so that those
20 people are not endangered, and I believe that under
21 CERCLA we have the authority to request that of
22 Conrail.

23 Q. I think -- well, I'm not going to
24 argue with you on that, but the point is: Isn't it

1 true, Mr. Wilk, that there are people out there
2 taking samples on the basis of the sampling and
3 analysis plan that you are telling us has not been
4 finally approved; isn't that true?

5 A. That is true.

6 Q. And once it's finally approved, I take
7 it you have no objection to providing it to Conrail;
8 is that correct?

9 A. That is correct.

10 Q. And that's -- and the reason why
11 Conrail is provided with information of that sort is
12 that the NCP and your guidance documents require you
13 or at least advise you to keep responsible parties
14 informed of such matters; isn't that true?

15 A. No. The reason why that is given to a
16 PRP is because it comes -- when it's a final
17 document, it becomes part of public record, and it
18 would be given out to any member of the public
19 including PRPs.

20 And the NCP talks about keeping
21 the public informed of what's going on at the site,
22 and I guess that kind of brings me back to -- and I
23 asked you before if you could provide me the
24 citation that gives PRPs -- I mean specifically

1 saying PRPs have to be informed. And I don't know;
2 I haven't heard it.

3 MR. JAFFE: Can we have a pause in the near
4 future, where would be a good place to stop?

5 MR. LAMBERT: Okay. Well, why don't we stop
6 here. Let me just -- let me just find one thing
7 here and then we'll stop. I'm sorry. It's a little
8 longer than I expected.

9 MR. JAFFE: That's no problem at all.

10 MR. LAMBERT: That's all right. I'll wait
11 until tomorrow. Okay.

12 (At 5:00 p.m. the deposition
13 was continued to 9:30 a.m.
14 on Wednesday, December 9,
15 1992)

16
17
18
19
20
21
22
23
24

1 STATE OF ILLINOIS]
] SS:
2 COUNTY OF C O O K]

3

4

5

6

7

8

9

10

I hereby certify that I have read the foregoing transcript of my deposition given at the time and place aforesaid, and I do again subscribe and make oath that the same is a true, correct and complete transcript of my deposition so given as aforesaid, as it now appears.

11

(Please Check One)

12

___ I have submitted errata sheets.

13

___ No corrections were made by me.

14

15

Charles Wilk, Deponent

16

17

18

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____, A.D., 1992.

19

20

21

22

23

24

1 STATE OF ILLINOIS]
2 COUNTY OF C O O K] SS:

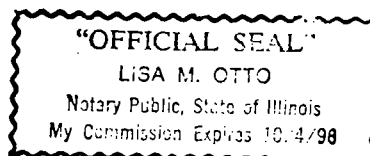
3 I, Lisa M. Otto-Bringle, a notary
4 public in and for the County of Cook and State of
5 Illinois, do hereby certify that Charles M. Wilk was
6 by me first duly sworn to testify the whole truth,
7 and that the foregoing deposition was recorded
8 stenographically by me and was reduced to
9 computerized transcript under my direction, and that
10 the said deposition constitutes a true record of the
11 testimony given by said witness.

12 I further certify that the reading and
13 signing of said deposition was not waived by the
14 witness and counsel.

15 I further certify that I am not a
16 relative or employee of attorney or counsel of any
17 of the parties, or a relative or employee of such
18 attorney or counsel, or financially interested
19 directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand and affixed my seal of office at
22 Chicago, Illinois, this 20th day of December, A. D.,
23 1992.

24
Lisa M. Otto-Bringle
Certified Shorthand Reporter
Illinois CSR License No. 084-003301



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF INDIANA
 SOUTH BEND DIVISION

3 UNITES STATES OF AMERICA,)

4 Plaintiff,)

5 vs.)

6 CONSOLIDATED RAIL CORPORATION,)
7 a/k/a CONRAIL,)

8 Defendant,)

 Third Party Plaintiff,)

9 vs.)

10 PENN CENTRAL CORPORATION, et al.,)

11 Third Party Defendants.)

Case No.
S90-00056

CERTIFIED COPY
When Stamped in Red

12 The deposition of CHARLES M. WILK,
13 called by the Defendants for examination, pursuant
14 to agreement and pursuant to the Code of Civil
15 Procedure of the State of Indiana, and the Rules of
16 the Supreme Court thereof, pertaining to the taking
17 of depositions, for the purpose of discovery, taken
18 before Lisa M. Otto-Bringle, Notary Public within
19 and for the County of Cook and State of Illinois,
20 and a Certified Shorthand Reporter of said State,
21 CSR License No. 084-003301, at 111 West Jackson
22 Boulevard, Chicago, Illinois, on the 9th day of
23 December, A. D. 1992, commencing at approximately
24 9:30 a.m.

ERNESTO R. ESPIRITU & ASSOCIATES (312) 263-1492

1 PRESENT:

2 DEPARTMENT OF JUSTICE, by
3 PETER E. JAFFE, Esq.
4 (Tenth and Constitution Avenue, N.W.
 P.O. Box 7611
 Washington, D.C. 20530)

5 appeared on behalf of the plaintiff;

6 BINGHAM, DANA & GOULD, by
7 PAUL J. LAMBERT, Esq.
8 (1550 M. Street N.W.
 Washington, D.C. 20005)

9 appeared on behalf of the defendant,
10 third party plaintiff.

11 FROST & JACOBS, by
12 PIERCE E. CUNNINGHAM, Esq.
13 (2500 Central Trust Center
 201 East Fifth Street
 Cincinnati, Ohio 45202)

14 appeared on behalf of the third party
15 defendant, Penn Central Corporation;

16 GOODWIN, PROCTER & HOAR, by
17 ROBERT A. FREEMAN, Esq.
18 (Exchange Place
 Boston, Massachusetts 02109-2881)

19 appeared on behalf of the third party
20 defendant, Gemeinhardt Company, Inc.,

21 o0o

22
23
24 ERNESTO R. ESPIRITU & ASSOCIATES (312) 263-1492

I N D E XWITNESSESPAGECHARLES M. WILK

Cross Examination by Mr. Lambert (cont'd)	129
Cross Examination by Mr. Freeman	282
Cross Examination by Mr. Jaffe	290
Redirect Examination by Mr. Cunningham	293
Recross Examination by Mr. Lambert	297
Recross Examination by Mr. Freeman	298

EXHIBITSID EVD

Wilk Deposition Exh. 1	149
Wilk Deposition Exh. 2	195
Wilk Deposition Exhs. 3 through 10	201
Wilk Deposition Exh. 4A	261

1 CROSS EXAMINATION (Cont'd)

2 BY MR. LAMBERT:

3 Q. Mr. Wilk, you mentioned yesterday that
4 you and Mr. Dalga did not precisely overlap as
5 remedial project manager for the Elkart site.

6 And I gather that there had been
7 a gap of some months; is that correct?

8 A. I have not been an RPM on the Conrail
9 railyard site at the same time as Dennis was.

10 Q. How long was the gap?

11 A. I don't know the exact month that
12 Dennis left the Agency, so I couldn't tell you the
13 length of the gap between when I started and when
14 Dennis left.

15 Q. Who was remedial project manager in
16 the interim period, however long it was?

17 A. I don't know.

18 Q. Do you know if there was one?

19 A. I do not know.

20 Q. Did I understand right yesterday that
21 you've never talked to Mr. Dalga about this
22 particular site?

23 A. Your understanding is incorrect.

24 Q. When did you speak with him about the

1 site?

2 A. I believe I testified yesterday I did
3 speak with Mr. Dalga over the phone.

4 Q. I forgot that. When did the
5 conversation occur?

6 A. I don't recall the date.

7 Q. Give me your best estimate, please.

8 A. Sometime between July and November.

9 Q. What was the subject matter of the
10 conversation?

11 A. I don't recall.

12 Q. Did you call him, or did he call you?

13 A. I don't recall. It may be both.

14 Q. Do you recall how long the phone
15 conversation lasted?

16 A. No.

17 Q. Less than an hour?

18 A. Yes.

19 Q. Less than a half hour?

20 A. I don't know.

21 Q. You do not remember anything at all
22 about the subject matter?

23 A. I don't recall.

24 Q. So as best you can recall today,

1 you've never been briefed by Mr. Dalga on what it
2 was he learned or thought he had learned with
3 respect to the site, is that correct, except in so
4 far as he left behind written documents that may or
5 may not have expressed his ideas?

6 A. Can you repeat the question?

7 Q. Yes.

8 As best you can recall today,
9 you've never been briefed by Mr. Dalga with respect
10 to the Conrail site; is that correct?

11 MR. JAFFE: You're speaking of only oral
12 brief as opposed to written --

13 BY MR. LAMBERT:

14 Q. That is right; for now I'm speaking of
15 oral briefing.

16 A. Well, if you exclude telephone
17 conversations of which I don't remember the content
18 on other than the content was about the Conrail
19 railyard site, then I have not been formally
20 briefed --

21 Q. You haven't been --

22 A. -- in that matter.

23 Q. You haven't been formally or
24 informally briefed; isn't that correct?

1 A. I mean, I haven't been -- well, can
2 you tell me -- ask me your questions.

3 Q. Except in so far as Mr. Dalga provided
4 you with information during the phone conversation
5 that you can't recall --

6 A. The information that I can't recall,
7 yes.

8 Q. Right. You've never been briefed by
9 Mr. Dalga with respect to the Conrail yard; is that
10 right?

11 A. I've been briefed by the Agency by
12 reading the Record of Decision.

13 Q. It would be very helpful and much
14 faster if you answer my questions.

15 You've never been briefed by
16 Mr. Dalga, have you?

17 A. It would be helpful and more quickly
18 if you give me clearer questions.

19 MR. CUNNINGHAM: If I may, now he is being
20 very evasive here, and he's been answering the
21 questions -- he did that to me yesterday, and it
22 would save a lot of time. I agree with Mr. Lambert
23 on that.

24 BY MR. LAMBERT:

1 Q. Let me try it again.

2 Apart from the phone
3 conversations, substance that you cannot recall, is
4 it correct that you have never been briefed orally
5 by Mr. Dalga with respect to the Conrail Super Fund
6 site?

7 A. No.

8 Q. When were you briefed by Mr. Dalga
9 orally with respect to the Conrail Super Fund site
10 then?

11 A. I have discussed the site with
12 Mr. Dalga during conversations on the telephone, and
13 I consider that a briefing. I may have asked him
14 questions on particular aspects of the site, and I
15 would consider that a briefing so --

16 Q. Apart from that phone conversation or
17 phone conversations, you've never been briefed, is
18 that correct, orally by Mr. Dalga?

19 A. That's correct.

20 Q. And you do not remember the substance
21 of those phone conversations; is that correct?

22 A. I don't recall them; that's correct.

23 Q. So you can't tell us anything that
24 Mr. Dalga had ever told you to prepare you to assume

1 responsibility as remedial project manager at the
2 Conrail site; is that correct?

3 A. Can you repeat the question?

4 (Question read)

5 THE WITNESS: Can you read the question one
6 more time?

7 (Question read)

8 THE WITNESS: That's correct.

9 And I'd like to say that there is
10 construction going on in the building while we're
11 speaking so that it's difficult for me to understand
12 the questions.

13 BY MR. LAMBERT:

14 Q. Did Mr. Dalga leave you any memo --
15 I'm talking about documents that are not part of the
16 administrative record now -- any memo or written
17 material to help you assume his responsibilities
18 that you can recall?

19 A. Mr. Dalga left me work product that he
20 had done. I think I talked about yesterday the
21 Unilateral order. I believe, at least I suspect, he
22 wrote the Record of Decision, or at least he drafted
23 that Record of Decision.

24 Q. Apart from those documents, is there

1 anything that you can think of that he left behind
2 to help you with your job?

3 A. I believe there is a memo which I
4 would consider enforcement confidential that tells
5 me about this site.

6 Q. That Mr. Dalga left behind?

7 A. That is correct.

8 MR. LAMBERT: Is that going to be withheld?
9 And if so, is it going to be identified on the
10 privileged list?

11 MR. JAFFE: If it is relevant to the document
12 request, it will be listed on the privilege list,
13 and it will be withheld.

14 BY MR. LAMBERT:

15 Q. Now I'd like to ask you a few
16 questions about that document so that we can
17 understand what the basis of this privilege is.

18 A. Just a minute.

19 (Discussion had off record)

20 BY MR. LAMBERT:

21 Q. First of all, is the document that you
22 referred to in the form of a memo or a letter, what
23 the form of the document is?

24 A. Yes.

1 Q. Do you remember who it was addressed
2 to?

3 A. No.

4 Q. Do you remember when it was written?

5 A. No.

6 Q. Do you remember when it was written in
7 relationship to Mr. Dalga's departure?

8 A. It was written before he left.

9 Q. Was the purpose of the document to
10 brief the next person coming along, like a turnover
11 memo?

12 A. Yes.

13 Q. Did it contain information with
14 respect to further investigation to be pursued at
15 the yard?

16 A. I don't recall.

17 Q. Would you tell me what subject matters
18 you can recall it covering without going into the
19 detail of what the discussion was or the subject
20 matters?

21 MR. JAFFE: I'll allow the deponent to answer
22 that only as to general subject matters if you can
23 recall.

24 THE WITNESS: If I can recall -- well, to the

1 best of my recollection would be the term, the memo
2 included information on what would be EPA's
3 enforcement strategy, and it would include -- it may
4 include information concerning remedial
5 investigation and feasibility study at the site.

6 BY MR. LAMBERT:

7 Q. I'd like to focus on just what, if
8 anything, you can recall about the part of it that
9 dealt with the remedial investigation and
10 feasibility study.

11 Is there anything that you can
12 recall about what it said concerning that subject,
13 not enforcement strategy?

14 MR. JAFFE: I'll allow the witness to answer
15 "yes" or "no" to that question.

16 THE WITNESS: So the yes or no question would
17 be do I recall the subject --

18 BY MR. LAMBERT:

19 Q. Right. Do you recall any of the
20 substance of that part of the --

21 A. No.

22 Q. Were you briefed by anyone apart from
23 Mr. Dalga with respect to the Conrail site when you
24 took over responsibilities as the RPM?

1 A. Yes.

2 Q. Who were you briefed by?

3 A. Kerry Street.

4 Q. Were you briefed by anybody other than
5 Mr. Street?

6 A. No. Well, not that I can recall.

7 Q. Fine. Did you ever have any
8 conversations with Cindy Nolan with respect to the
9 Conrail site?

10 A. Yes, I have.

11 Q. Have you ever had conversations with
12 Ken Thiessen, T-h-i-e-s-s-e-n, with respect to the
13 Conrail site?

14 A. Yes.

15 Q. Let's start with Miss Nolan first. Do
16 you recall when you spoke with her?

17 A. No.

18 Q. Can you give me a month?

19 A. No, I cannot.

20 Q. Can you give me a rough estimate of
21 the time?

22 A. Between June 15th and the present.

23 Q. That's the best you can do?

24 A. June 15th, 1992.

1 Q. Is that really the best you can do?

2 A. Yes, it is.

3 Q. Okay. Can you give me an estimate as
4 to when you spoke to Mr. Thiessen?

5 A. During October or November of 1992.

6 Q. Let's deal with Miss Nolan first. Can
7 you remember the subject matter of your conversation
8 or conversations with her?

9 A. No.

10 Q. You have no recollection at all?

11 A. No.

12 Q. How about Mr. Thiessen; do you have
13 any recollection of your conversation with him?

14 A. Yes.

15 Q. Can you tell me what the subject
16 matter was?

17 MR. JAFFE: Again, I'll allow you to answer
18 solely to general subject matter.

19 THE WITNESS: The subject matters would be
20 the installation of water mains and the use of
21 filters at private homes and residents.

22 MR. JAFFE: Excuse me one second.

23 (Discussion had off record)

24 BY MR. LAMBERT:

1 Q. What can you recall with respect to
2 your conversation with him concerning water mains?

3 MR. JAFFE: I object to that on the grounds
4 of deliberative process.

5 BY MR. LAMBERT:

6 Q. You may answer.

7 MR. JAFFE: And you may not answer.

8 BY MR. LAMBERT:

9 Q. You may not answer.

10 Can you recall the subject matter
11 of that conversation with respect to water mains?

12 A. It is as I said in response to your
13 earlier question. Perhaps you can read it back from
14 the transcript.

15 Q. No. Let's just answer this question.

16 Can you recall the substance of
17 your conversation with Mr. Thiessen dealing with
18 water mains?

19 MR. JAFFE: That's a yes or no question.

20 THE WITNESS: Yes.

21 BY MR. LAMBERT:

22 Q. Can you tell us did you initiate this
23 conversation?

24 A. Yes.

1 Q. Can you tell us at what stage you were
2 in the remedial design process at the time that you
3 initiated this conversation?

4 MR. JAFFE: Can you tell me what you mean by
5 stage?

6 BY MR. LAMBERT:

7 Q. What was going on in the remedial
8 design process.

9 What I'm trying to get at is what
10 -- I don't know whether or not there's a sound basis
11 for deliberative process privilege here based upon
12 what we've heard so far. All I know is that he had
13 a conversation, and it related to something within
14 his job responsibilities that as far I'm concerned
15 could very well relate to whether or not costs
16 incurred were consistent with the National
17 Contingency Plan, in which case it is discoverable.

18 The fact that he talked with
19 somebody doesn't make it privileged. So I'm trying
20 to find out enough so that I can figure out whether
21 or not I care enough about this to press it.

22 (Discussion had off record)

23 THE WITNESS: To the best of my recollection,
24 I spoke with Mr. Thiessen concerning a work plan

1 that was submitted, a draft work plan that was
2 submitted by Conrail for the remedial design of the
3 Conrail railyard.

4 BY MR. LAMBERT:

5 Q. Why did you speak to Mr. Thiessen
6 about that subject?

7 A. Mr. Thiessen has had significant
8 experience in installation of water mains at Super
9 Fund sites, and I spoke with him to get additional
10 information.

11 Q. Were you asking for information
12 related to his experience at other sites in
13 installing water mains?

14 A. Yes.

15 Q. And what did he tell you? Is this
16 still outside -- still covered by the -- to me, I
17 don't see a deliberative process on this one.

18 MR. JAFFE: Well, would you like me to
19 explain where the deliberative process is?

20 MR. LAMBERT: Yes, sure, I'd be happy if you
21 would.

22 MR. JAFFE: Okay. To the extent that these
23 conversations concern whether to -- deliberation
24 about decisions to be made as to whether to approve

1 or disapprove a work plan, that's deliberative
2 process.

3 If Mr. Wilk has information which
4 is solely factual and he can answer your questions,
5 he is free to do so. But to the extent that it asks
6 for anything, any discussion related to whether to
7 approve or disapprove the work plan, that is covered
8 by the deliberative process.

9 BY MR. LAMBERT:

10 Q. Did he provide you with any factual
11 information?

12 A. I don't recall.

13 Q. Did you provide him with any factual
14 information?

15 A. Can you tell me what you mean by
16 factual information?

17 Q. I'm just using Peter's word.

18 I presume factual information
19 with respect to the site, which would have
20 presumably been the information upon which you were
21 asking him for your -- for some advice.

22 A. Well, then can you define -- can you
23 read your previous question again, please? Could
24 you ask me your previous question again?

1 Q. I don't remember what the previous
2 question was.

3 MR. FELICE: I believe it was did he provide
4 you with any factual information.

5 MR. LAMBERT: I think it must be the one
6 before that, and I don't remember the one before
7 that.

8 THE WITNESS: Well, yes. And then your next
9 question was did I provide him with any factual
10 information.

11 BY MR. LAMBERT:

12 Q. Right, right.

13 A. And the answer is yes.

14 Q. What factual information did you
15 provide to him?

16 A. I don't recall the specific factual
17 information.

18 Q. So you don't recall the factual
19 information you provided to him; and you do not
20 recall any factual information that he provided to
21 you; is that right?

22 A. Right.

23 Q. It must have been an interesting
24 discussion. All right. Let's move on.

1 Apart from that conversation with
2 Mr. Thiessen, have you had any other conversations
3 with him that relate to the Elkhart yard?

4 A. Could you repeat the question?

5 Q. Did you have any other conversations
6 with Mr. Thiessen besides that one that relates to
7 the Elkhart railyard?

8 A. If you're asking me did I have more
9 than one conversation with Mr. Thiessen, I believe I
10 did.

11 Q. Were your other conversations all on
12 the same subject; that is the installation of water
13 mains and use of filters?

14 A. I don't recall.

15 Q. Have you ever discussed with him other
16 sources of contamination in the Conrail yard area?

17 A. Yes.

18 Q. When did that discussion occur?

19 A. I guess when you say Conrail railyard
20 area, do you mean in the vicinity of the Conrail
21 railyard?

22 Q. At the yard or in the vicinity of the
23 yard.

24 A. Okay. At the vicinity of the yard,

1 yes, I have.

2 Q. Okay. Would you describe those
3 conversations, please?

4 MR. JAFFE: I object to that question on the
5 grounds of work product.

6 MR. LAMBERT: What is your view as to the
7 scope of the work product privilege? This is one
8 manager to another. If it -- if you're telling me
9 this is all enforcement related, then --

10 MR. JAFFE: If the scope of this is
11 enforcement related -- I should more carefully word
12 my objections. I apologize. I object to that on
13 the grounds of work product in so far as it relates
14 to enforcement investigations. As far as it relates
15 to the contamination or other matters related solely
16 to the cleanup, you're permitted to answer the
17 question.

18 BY MR. LAMBERT:

19 Q. Did he provide you with information
20 relating to the location of the contamination either
21 on the Elkhart yard or in the vicinity of the
22 Elkhart yard?

23 A. Yes.

24 Q. What information did he provide you on

1 that subject without getting into any discussion of
2 whether there were enforcement implications for that
3 related to that information?

4 A. We discussed a contamination existence
5 at a place called -- what's known as a Gemeinhardt.

6 Q. When did this discussion occur?

7 A. I don't recall.

8 Q. What month did it occur?

9 A. Well, we talked before I said between
10 I believe it was October or November. I stated that
11 earlier.

12 Q. Did you initiate the call with
13 Mr. Thiessen?

14 Was it a call, first of all, a
15 telephone call?

16 A. No.

17 Q. You met with him, correct?

18 A. Yes.

19 Q. Is his office here in Washington -- in
20 Chicago as well?

21 A. Yes.

22 Q. Can you tell me what information he
23 provided you with respect to Gemeinhardt?

24 A. I couldn't recall the specific

1 information.

2 Q. Can you give me the substance of it,
3 please, if you can recall?

4 A. The substance is the existence of
5 contamination from Gemeinhardt, and it is in the
6 general vicinity of the Conrail railyard site.

7 Q. Did he provide you with any other
8 information with respect to Gemeinhardt that you can
9 recall today?

10 A. Yes.

11 Q. What else did he tell you?

12 MR. JAFFE: Same objection as to enforcement
13 issue, but you can answer as far as contamination is
14 concerned.

15 THE WITNESS: He briefly described the work
16 that has been done at Gemeinhardt.

17 BY MR. LAMBERT:

18 Q. Anything besides that?

19 A. No.

20 Q. Have you ever reviewed any documentary
21 information concerning Gemeinhardt?

22 A. Yes.

23 Q. What have you reviewed?

24 A. I don't recall the titles of the

1 things I reviewed.

2 Q. Why don't you give me a general
3 description of what you reviewed?

4 A. Documents concerning the Gemeinhardt
5 area.

6 Q. Can you be more specific than that?

7 A. I don't recall more specific than
8 that.

9 Q. Do you recall what contamination has
10 been associated by EPA with the Gemeinhardt
11 facility?

12 A. Are you asking me do I recall the
13 substances of --

14 Q. Yes.

15 A. -- that were found? No, I do not.

16 Q. Do you know the location of the
17 Gemeinhardt facility?

18 A. In general terms, yes.

19 MR. LAMBERT: Could you mark this an exhibit?
20 How are doing this, Exhibit 1?

21 MR. JAFFE: One.

22 MR. LAMBERT: Wilk Exhibit 1, please.

23 (Marked Wilk Deposition

24 Exh. 1)

1 BY MR. LAMBERT:

2 Q. Can you show us where Gemeinhardt is?

3 A. It is south of the railyard.

4 Q. Can you take a pen and show us where
5 you think it is?

6 A. Is there a scale on this drawing?

7 Q. I don't know. I'm not asking you to
8 do it to scale but just a rough estimate.

9 A. Well, without a scale on a drawing, I
10 don't think I could really show you the area.

11 Q. I'd like you to -- recognizing that
12 you've preserved your rights to argue that the
13 distances are out of kilter --

14 A. Okay.

15 Q. -- show me roughly where Gemeinhardt
16 is in relationship to the yard.

17 All right. Would you put a "G"
18 inside of there and put your initials there? Okay.

19 A. I must say -- I'm sorry. No, that's
20 fine.

21 Q. Oh, there is a scale. I can't read
22 it.

23 A. You're right. There is a very blurry
24 scale there.

1 Q. Well, how far -- I mean you must,
2 since you were looking for a scale, you must have
3 some idea as to how far Gemeinhardt is from the
4 Conrail yard.

5 A. I don't recall the distance.

6 Q. Okay. Why were you looking for a
7 scale?

8 A. Because when I look at a map, I always
9 look at a scale so I understand whether or not the
10 drawing is not skewed, you know, that it's shortened
11 this way as opposed to this way laterally or --

12 Q. Well, that's an E&E --

13 A. I mean, it's just when you look at it.

14 Q. Well, that's an E&E map.

15 A. Right.

16 Q. So I presume it's been done to scale.
17 Wouldn't you presume that?

18 A. I would presume that, yes.

19 Q. And the best you can do for locating
20 Gemeinhardt is that it's somewhere within the area
21 that you marked?

22 A. That is correct at this time.

23 Q. Did you have any discussion with
24 Mr. Thiessen about the remedial activities that are

1 underway in connection with the Gemeinhardt site?

2 A. Yes.

3 Q. What did he tell you about it; do you
4 recall?

5 A. There is groundwater extraction
6 occurring.

7 Q. There is groundwater extraction
8 occurring as of now?

9 A. My understand is yes. I mean, that's
10 based on my discussion.

11 Q. Did he provide you with any other
12 information with respect to the Gemeinhardt
13 contamination that you can recall?

14 A. Not that I can recall.

15 Q. Apart from the conversations that
16 you've had with Mr. Thiessen that you've described
17 thus far, have you had any others?

18 A. Could you repeat the question?

19 Q. Yes. Apart from the conversations
20 with Mr. Thiessen that you've described thus far,
21 have you had any others relating to Elkhart?

22 A. With whom?

23 Q. Mr. Thiessen.

24 A. Oh, you didn't make that clear. I

1 don't remember.

2 Q. Have you ever received anything from
3 Mr. Thiessen directed specifically to you in
4 connection with the Elkhart area? In other words,
5 has he ever written you a letter or written you a
6 memo on the subject matter of conditions or
7 locations within the vicinity of the railyard?

8 A. Could you repeat the question, or
9 could I hear the question back?

10 Q. You certainly can.

11 A. Thank you.

12 MR. LAMBERT: Would you like to read it back?

13 (Question read)

14 THE WITNESS: I guess I have difficulty with
15 your question in that to be quite frank with you,
16 Mr. Thiessen wrote me a memo on -- that concerns a
17 review, a brief review of Conrail's RD work plan
18 with some suggestions -- as far as to my
19 recollection about what the content of the memo was,
20 it talked about suggestions about what we needed to
21 do in placing a water main.

22 BY MR. LAMBERT:

23 Q. Okay. Apart from that, have you ever
24 received anything from Mr. Thiessen in writing that

1 related to the Elkhart area that was directed to
2 you, not documents that he wrote that happened to be
3 in some administrative record somewhere?

4 A. No. I'm sorry, you know, I was asking
5 her the question. Your question was -- it didn't
6 seem to include that memo, and I just wanted to be,
7 I mean, helpful.

8 Q. We appreciate that.

9 Have you ever had any
10 conversations with Cindy Nolan? Did I ask you that?
11 If I asked you, I'm sorry.

12 A. Yes, you did.

13 Q. And you said no, or you said you
14 couldn't remember, correct?

15 A. We can read back what I said.

16 Q. Well --

17 A. You asked me the question before.

18 Q. It must have been the noise in the
19 background. I couldn't hear your answer.

20 A. I believe my answer was yes, I did
21 have conversations with her.

22 Q. Do you remember the subject matter?

23 A. I think my answer before was I don't
24 recall it.

1 Q. Fine.

2 Did you ever receive anything
3 from Cindy Nolan directed specifically to you that
4 related to the Elkhart Conrail area?

5 A. No.

6 Q. Now, you mentioned that you had a
7 briefing from Mr. Street. Did that briefing deal
8 with such matters as the existence and nature of
9 sources of contamination either at the yard or in
10 the vicinity of the yard?

11 MR. JAFFE: And I object to that question on
12 the grounds of work product and deliberative
13 process. If there is any information of a factual
14 nature outside of those --

15 THE WITNESS: Could I go to the restroom?

16 MR. JAFFE: Sure.

17 THE WITNESS: Thanks.

18 MR. JAFFE: Let me finish my objection next
19 time.

20 THE WITNESS: Oh, I'm sorry.

21 MR. JAFFE: Just kidding.

22 (Short recess taken)

23 MR. JAFFE: I'll allow you -- I think I've
24 stated my objection, but I will allow the witness to

1 answer your question if it's -- maybe we ought to
2 read back your question anyway.

3 BY MR. LAMBERT:

4 Q. Did Mr. -- let me try and go around
5 this whole problem. Did Mr. --

6 MR. FREEMAN: Street.

7 BY MR. LAMBERT:

8 Q. Right, Street, did he provide you any
9 information with respect to the location either on
10 site or off site of potential sources of
11 contamination, any factual information?

12 MR. JAFFE: And my objection to that question
13 is based on work product. Any information relating
14 to enforcement I object to and instruct the witness
15 not to answer.

16 As far as deliberative process,
17 anything relating to any deliberations toward Agency
18 decisions I object to and instruct the witness not
19 to answer.

20 You may answer as to any factual
21 information relating to the cleanup of
22 contamination.

23 MR. LAMBERT: The question calls for a "yes"
24 or "no" answer.

1 MR. JAFFE: Correct.

2 BY MR. LAMBERT:

3 Q. Do you want me to repeat it?

4 A. Yes, please.

5 Q. Did Mr. Street provide you with any
6 factual information relating to the existence or
7 location of sources of contamination either on the
8 Conrail yard or in the general vicinity of the
9 Conrail yard?

10 A. Yes.

11 Q. What information did he provide you?

12 MR. JAFFE: Now, same objection previously
13 stated, but you may answer as to contamination or
14 cleanup issues.

15 THE WITNESS: If I might have a moment. And
16 can I have a moment out loud?

17 MR. JAFFE: Well, it depends on who you want
18 to talk to.

19 THE WITNESS: Well, let's go outside.

20 (Discussion had off record)

21 THE WITNESS: Okay. Could I have the
22 question one more time?

23 BY MR. LAMBERT:

24 Q. A third time?

1 A. However many times it's been.

2 Q. Did he provide you any information
3 with respect to the existence or location of sources
4 of contamination on the Conrail yard or in the
5 vicinity of the Conrail yard?

6 A. Yes.

7 Q. What information did he provide you?

8 MR. JAFFE: And I object to that for the
9 reasons already stated.

10 You may answer as far as factual
11 information is concerned.

12 THE WITNESS: We talked about possible
13 locations of contamination at the site or
14 contamination that has been already documented --
15 BY MR. LAMBERT:

16 Q. Did you talk --

17 A. -- at the site.

18 Q. Did you talk about possible sources of
19 contamination off the site?

20 A. When you mean site --

21 Q. Off the yard.

22 MR. JAFFE: Same objection. You can answer.

23 THE WITNESS: Yes.

24 BY MR. LAMBERT:

1 Q. What sources, what possible sources of
2 contamination did you talk about? Subject matter
3 now only. In other words, I want the names of the
4 sources, not the substance of the conversation yet.

5 MR. JAFFE: I don't understand that. It
6 sounds like you're asking for subject matter of the
7 conversation when you ask for what the sources were.

8 MR. LAMBERT: No. I'm inching towards it,
9 but I'd like to know what sources were discussed in
10 general before I ask him for the discussion on those
11 other potential sources.

12 MR. JAFFE: But your question presumes --
13 when you say what sources, your question presumes
14 that the people were identified in the conversation
15 as sources.

16 BY MR. LAMBERT:

17 Q. What potential sources off the yard
18 did you talk about?

19 MR. JAFFE: You may answer as to the names of
20 those sources, potential sources.

21 THE WITNESS: Potential sources may be
22 Elkhart Business Machines.

23 BY MR. LAMBERT:

24 Q. Is that the same as Elkhart Office

1 Machines?

2 A. I imagine it would be, yes.

3 Q. Okay.

4 A. And I believe a fiber drum company; I
5 don't recall the name.

6 Q. Fibertron?

7 A. It could be.

8 Q. Any others?

9 A. None that I can recall right now.

10 Q. What was the discussion with respect
11 to Elkhart Office Machines?

12 MR. JAFFE: I object to that question on the
13 grounds of work product, and I instruct the witness
14 not to answer.

15 BY MR. LAMBERT:

16 Q. Now, Mr. Street is your superior; is
17 he not?

18 A. He's my supervisor.

19 Q. And did this conversation occur in the
20 context of your work as a remedial project manager
21 on the site?

22 A. Yes.

23 Q. Was it a conversation that related to
24 the question of where further investigation would be

1 done in Phase 3 of the RI?

2 MR. JAFFE: I object to that question as it
3 asks for enforcement issues. I instruct you not to
4 answer as to enforcement issues.

5 You may answer as to issues
6 relating to the phased RI only.

7 THE WITNESS: So what was the question?

8 BY MR. LAMBERT:

9 Q. Did the conversation relate to the
10 general question of whether or not there would be
11 investigation done in the vicinity of these
12 potential sources?

13 A. Yes.

14 Q. Would you now tell me the nature of
15 the -- the substance of the conversation?

16 A. I can't recall.

17 MR. JAFFE: Same objection.

18 THE WITNESS: Sorry.

19 MR. JAFFE: That's okay.

20 BY MR. LAMBERT:

21 Q. When did the discussions occur?

22 A. Between June 15th, 1992, and the
23 present.

24 Q. Can you be any more specific than

1 that?

2 A. No.

3 Q. Do you recall receiving a draft work
4 plan for Phase 3 of the RI from E&E?

5 A. Yes.

6 Q. Do you recall whether the conversation
7 with Mr. Street occurred before or after you
8 received the draft work plan?

9 A. I already testified that I can't
10 recall within that period the exact date between
11 June 15th and present, so therefore, I mean, I can't
12 recall, I mean, if it came in after -- if we talked
13 about it before or after I received a draft work
14 plan.

15 Q. Have you had any other conversations
16 with Mr. Street besides the one that you've just
17 alluded to that dealt with the -- which dealt with
18 potential sources of contamination either on the --
19 either on the Conrail yard or in the vicinity of the
20 Conrail yard?

21 A. I'm sorry?

22 Q. Have you had any other conversations
23 with Mr. Street besides that one relating to
24 potential sources?

1 A. I may have had more than one
2 conversation with Mr. Street concerning the Conrail
3 railyard.

4 Q. Can you remember any of them, what you
5 talked about? I mean, it's not worth maybe the
6 hassle about this if you don't remember them.

7 A. Well, then, I mean, if you're asking
8 me to tell you what we had conversations on, if I
9 could recall them, I cannot.

10 Q. Fine. You remember having
11 conversations, but you don't remember what was said?

12 A. Not sitting here, no.

13 Q. Okay. Then I can't very well pursue
14 it. We'll move on.

15 When you have conversations, when
16 you've had conversations with Mr. Thiessen and with
17 Miss Nolan and with Mr. Street and Mr. Dalga, have
18 you taken notes?

19 A. No.

20 Q. Do you keep any sort of diary or
21 journal that will tell you when the conversation
22 occurred?

23 A. No.

24 Q. When you took over as remedial project

1 manager, did you review a file of documents?

2 A. I reviewed documents on the site. Did
3 I review an entire file of everything that's on the
4 site? No.

5 Q. Can you recall what you did review?

6 A. No. I can recall some of them. I
7 can't recall all of them.

8 Did you want me to list what I
9 can recall?

10 Q. Yes.

11 A. I read the Unilateral, the draft of
12 it, and the Record of Decision.

13 Q. Can you recall anything other than
14 that?

15 A. No. That doesn't mean that I didn't
16 do that. I just can't recall the titles of the
17 documents.

18 Q. Do you recall reviewing any documents
19 that have been submitted either by Conrail or on
20 behalf of Conrail by either their counsel or by GTI?

21 MR. JAFFE: Is this at any time or a specific
22 time?

23 MR. LAMBERT: Any time.

24 THE WITNESS: I believe I reviewed a GTI

1 document.

2 BY MR. LAMBERT:

3 Q. Do you recall what it was?

4 A. I don't recall the title.

5 Q. Do you recall when you reviewed it?

6 A. Between June 15th, 1992, and the
7 present.

8 Q. Is this some document other than the
9 draft work plan for the RDRA?

10 A. Yes.

11 Q. Do you recall whether it was a
12 document that was sent to you within the time period
13 that you've just defined as opposed to a document
14 that was in the file from before you took over?

15 A. I don't recall.

16 Q. Who is the person within the EPA who
17 makes the final decision as to the scope of the
18 remedial investigations for Phase 3?

19 A. Can you repeat the question?

20 MR. LAMBERT: Would you read it back?

21 (Question read)

22 THE WITNESS: Scope of remedial
23 investigations? The contractor work plan, EPA's
24 contractor work plan. The approval of that work

1 plan would go out under a contracting officer.

2 BY MR. LAMBERT:

3 Q. Who approves it for substance? The
4 scope of the work plan, who approves the scope of
5 the work plan?

6 A. Formally, as I stated, the contracting
7 official.

8 Q. What's your role?

9 A. My role would be to recommend whether
10 or not the scope should be approved or not.

11 Q. Who do you recommend it to?

12 A. The -- I know this. The P.O., and he
13 recommends it to the C.O.

14 Q. Who is the P.O. -- what is the P.O.,
15 and what is the C.O.?

16 A. I believe P.O. is purchasing officer,
17 and C.O. is contracting officer.

18 Q. Okay. Neither the purchasing officer
19 nor the C.O. know about the Conrail yard in detail,
20 do they?

21 A. I don't know the answer to that.

22 Q. Isn't it true that you are the person
23 who makes the decision within EPA as to the scope of
24 the work plan?

1 MR. JAFFE: I object to that question on the
2 grounds of deliberative process.

3 MR. LAMBERT: Oh, come on, Peter. We ought
4 to at least get to know who makes the final decision
5 here.

6 MR. JAFFE: You know who makes the final
7 decision. He just told you who makes the final
8 decision. As to the deliberations for making that
9 final decision, that is privileged under the
10 deliberative process.

11 MR. LAMBERT: It's dealt with in the NCP.
12 How can it be privileged?

13 BY MR. LAMBERT:

14 Q. Have you recommended the scope of the
15 work plan to anybody other than the purchasing
16 officer and the contracting officer?

17 A. When you mean recommended, recommended
18 approval or disapproval or --

19 Q. Have you recommended approval or
20 disapproval to anybody other than the purchasing
21 officer and the contracting officer?

22 A. No.

23 Q. Who is the purchasing officer?

24 A. Tom Short.

1 Q. And who is the contracting officer?

2 A. I think it's Don Anderson. I believe
3 those names are correct. I mean, you'd have to go
4 through some Agency documents to verify this.

5 Q. What would Mr. Short's connection with
6 the Elkhart yard be?

7 A. He is the purchasing officer for the
8 site.

9 Q. What are his -- what's his job as
10 purchasing officer?

11 A. I don't know what his -- I couldn't
12 tell you specifically what his job description is or
13 that.

14 Q. Do you know if he knows anything at
15 all about the contamination of the site or near the
16 site?

17 A. If he knows anything at all?

18 Q. Do you know if he does?

19 A. I would imagine he knows that it's a
20 Super Fund site and there's contamination.

21 Q. Apart from that, do you know if he
22 knows anything at all?

23 A. He may or may not. I don't know.

24 Q. How about Mr. -- the other gentleman

1 you mentioned, Mr. Anderson; does he know anything
2 about the Conrail Super Fund site?

3 A. Yes.

4 Q. What does he know, to your knowledge?

5 A. I don't know what he knows.

6 Q. I take it that E&E made a
7 recommendation to you about the scope of the Phase 3
8 remedial investigation; is that right?

9 MR. JAFFE: You can answer that "yes" or
10 "no."

11 THE WITNESS: Yes.

12 BY MR. LAMBERT:

13 Q. They provided you with a draft?

14 MR. JAFFE: A draft?

15 BY MR. LAMBERT:

16 Q. Of a work plan for the Phase 3
17 remedial investigation?

18 A. Are you asking me did they provide me
19 with a draft of a Phase 3 RIFS work plan from E&E?

20 Q. Yes.

21 A. The answer is yes.

22 Q. Was that in the form of the
23 recommendation?

24 A. Yes.

1 Q. Did you discuss that with Mr. Street?

2 A. I don't recall.

3 Q. Who is the head of the E&E team that's
4 involved with the Conrail site?

5 A. Who is the person that I deal with on
6 a day-to-day basis? It's Bridgette Lombardi.

7 Q. Is there somebody also involved who --
8 who is a senior to her within E&E that you do not
9 deal with -- with respect to this project that you
10 do not deal with on a day-to-day basis?

11 A. Certainly. On this project?

12 Q. Yes.

13 A. I'm sure that she has to -- she has a
14 supervisor, and I don't really know the structure of
15 E&E management.

16 Q. You do not know who her supervisor is?

17 A. I don't recall the name.

18 Q. Do you know what role the supervisor
19 plays?

20 A. Supervisor of Bridgette.

21 Q. Do you know whether the supervisor
22 reviews draft work plans before they're provided to
23 you?

24 A. I don't know that.

1 Q. What's Bridgette's background; do you
2 know?

3 A. I don't recall. Well, I'm sorry. She
4 was working on this site previous to becoming the
5 project manager of E&E on this site.

6 Q. What's her educational background?

7 A. I can't recall it.

8 Q. What's her experience; do you know?

9 A. You mean specifically what has she
10 done?

11 Q. What I'm really getting at is how do
12 you know how much reliance to place upon her
13 judgment in connection with this project?

14 A. The work plan and -- well, the work
15 plan would have a resume of her. I believe the work
16 plan would have a resume of her experience.

17 Q. Do you recall reviewing a resume of
18 her experience?

19 A. Yes.

20 Q. Do you recall when you reviewed it?

21 A. No.

22 Q. Do you recall what it said?

23 A. No, specifically what it said, no.

24 The impression that I have is that she has had a

1 significant amount of field experience at this site
2 and that she has an educational background in
3 sciences that is quite good.

4 Q. Apart from reliance upon Bridgette's
5 judgment, do you rely on anyone else's judgment at
6 E&E that you can identify for us in forming your own
7 views with respect to whether or not to recommend
8 work plans to the contracting officer and the
9 purchasing officer?

10 A. That's a difficult question to answer
11 in that I would assume or I know that a work plan
12 submitted to us would undergo internal E&E review,
13 and so those reviewers would have probably comments
14 or additions or subtractions to the work plan prior
15 to submitting it to me.

16 Do I know the names of those
17 reviewers? I do not.

18 Q. Do you know how much -- do you know
19 whether -- do you know what experience that they
20 have had -- what experience they have had reviewing
21 work plans for Super Fund sites?

22 A. I don't recall.

23 Q. Did you ever know?

24 A. I don't recall.

1 Q. Apart from whatever advice you've
2 gotten from E&E with respect to the scope of the
3 Phase 3 work plan, have you gotten advice from
4 anybody else as to the scope?

5 A. Yes.

6 Q. Who else have you gotten advice from?

7 A. Kerry Street.

8 Q. And anybody besides Mr. Street?

9 A. Not that I can recall.

10 Q. And I think you've already told us
11 that you can't recall what advice you got from
12 Mr. Street; is that correct?

13 A. Well, we'd have to back through the
14 transcript to find it.

15 Q. Let's try your memory. What advice
16 did you get from Mr. Street on the work plan?

17 A. I'm sorry. I don't recall.

18 MR. JAFFE: No point now.

19 THE WITNESS: You were trying to tell me --
20 were you going to object to that?

21 MR. JAFFE: I was, but since you do not know,
22 it's irrelevant.

23 THE WITNESS: I don't recall. I didn't say I
24 don't know. I don't recall.

1 BY MR. LAMBERT:

2 Q. Well, I just can't leave that on the
3 record, Mr. Wilk. I appreciate you do not recall.
4 What do you know that you can't recall?

5 MR. JAFFE: Object. I will object then that
6 any advice internally in the Agency as to whether --
7 as to final decisions include the scope of work
8 plan, and whether to accept them or not accept them
9 or approve them or disapprove them are protected by
10 the deliberative process privilege, and I instruct
11 the witness not to answer.

12 BY MR. LAMBERT:

13 Q. Well, let me try one more question on
14 the subject and then I'll move on.

15 Do you recall the magnitude,
16 anything about the magnitude of Mr. Street's
17 comments? Were there many comments?

18 A. No.

19 Q. Were they in writing, or were they
20 oral?

21 A. These are comments on what?

22 Q. The work plan.

23 A. They were oral.

24 Q. Did they occur during the course of a

1 phone conversation or during the course of a
2 meeting?

3 A. A meeting.

4 Q. Was the meeting about Elkhart, or was
5 it about Elkhart and other things?

6 A. About --

7 Q. Let me rephrase it.

8 A. About Elkhart.

9 Q. Okay. Did the meeting about Elkhart
10 include matters other than the work plan?

11 A. I don't recall.

12 Q. Do you recall how long your discussion
13 was with Mr. Street with respect to the work plan?

14 A. No.

15 Q. Do you recall whether it was more or
16 less than an hour?

17 A. No.

18 Q. Do you have time records showing time
19 that you spent reviewing the work plan?

20 A. I have a time sheet that tells you the
21 hours I spent during the day on the Conrail site, my
22 other sites, general remedial and enforcement
23 activities, my leave, my annual leave and
24 holidays --

1 Q. But it doesn't show what you did on
2 any given day with respect to the Conrail project?

3 A. It couldn't tell you whether I was
4 working on the work plan or working on something
5 else that's relevant to the Conrail railyard site.

6 Q. Apart from advice that you received
7 from E&E and advice that you received from
8 Mr. Street, did you receive advice from anyone else
9 with respect to the scope of the Phase 3 RI work
10 plan?

11 A. I don't recall.

12 Q. In reviewing and in conditionally
13 approving the work plan, have you taken into account
14 any factual information that you were provided by
15 anybody with respect to spills or other releases of
16 hazardous substances on the railyard property
17 itself?

18 MR. JAFFE: I object to that question on
19 deliberative process as far as it asks for
20 information relating to the thought process of
21 whether to approve or disapprove the work plan.

22 If you have other information that is
23 responsive to that question, you may answer.

24 MR. LAMBERT: That question calls for a "yes"

1 or "no" answer.

2 MR. JAFFE: I know.

3 THE WITNESS: Could you repeat the question?

4 MR. LAMBERT: Why don't you read it.

5 (Question read)

6 THE WITNESS: Yes.

7 BY MR. LAMBERT:

8 Q. Who were the other sources -- who
9 provided you with factual information, or what
10 provided you with factual information? Where did it
11 come from, in other words?

12 A. I cannot recall all the sources.

13 Q. Can you recall any of the sources?

14 A. I think, as we've already talked
15 about, I would have spoken with Mr. Street and
16 Bridgette, and others I may or may not have talked
17 to; I can't recall any other people.

18 Q. I take it that you have not been
19 provided with any information in connection with the
20 work plan, that is concerning information obtained
21 from Conrail employees or former Conrail employees;
22 is that correct?

23 A. You take it that I --

24 Q. You have not been provided -- let me

1 start over again.

2 A. Okay.

3 Q. In your review of the work plan for
4 Phase 3, I take it that you have not been provided
5 with any factual information from any source
6 concerning information provided to that source by
7 former or current Conrail employees; is that right?

8 A. Well, we have information from the
9 Unilateral that talks about Affidavits by two
10 gentlemen who I believe were Conrail employees at
11 some time.

12 Q. We'll come back to that.

13 Apart from that, is there any
14 other information that you can recall that came from
15 Conrail employees?

16 A. Not that I can recall.

17 Q. Okay.

18 A. That doesn't mean that I did or
19 didn't.

20 Q. Was the scope of the Phase 3 remedial
21 investigation discussed between you and counsel
22 either here at EPA or the Department of Justice?

23 A. Yes.

24 Q. Did you take into account in your

1 conditional approval of the work plan any advice
2 that you received with respect to the areas that
3 should or should not be sampled from Counsel?

4 MR. JAFFE: I'm going to object to that
5 question on the grounds of deliberative process and
6 work product and attorney/client privilege in so far
7 as far attorney/client privilege is relevant, and I
8 instruct the witness not to answer.

9 MR. LAMBERT: That calls for a "yes" or "no"
10 answer.

11 MR. JAFFE: I instruct the witness not to
12 answer "yes" or "no." The question related to
13 whether he took certain information into account in
14 determining whether or not to approve or disapprove.

15 MR. LAMBERT: Well, the question was were
16 there any conversations of matters on this subject,
17 and it seems to me that I'm certainly entitled to
18 that. I'm entitled to enough information so I can
19 test the claim of privilege. And if I don't know
20 whether there was a conversation or not, what am I
21 supposed to do?

22 MR. JAFFE: He said there was a conversation.

23 MR. LAMBERT: But I don't know whether it was
24 taken into account. If it was not taken into

1 account, then so what?

2 BY MR. LAMBERT:

3 Q. All right. We'll do it in two steps.

4 Did you have any conversations
5 with counsel concerning the scope of the Phase 3
6 work plan?

7 A. Yes. Didn't I answer that question
8 before?

9 Q. Well, but we're going to go at it in
10 little bites here.

11 Did that discussion concern areas
12 that should be sampled or should not be sampled?

13 A. I don't recall.

14 Q. Did you take into account in deciding
15 what areas should be sampled and shouldn't be
16 sampled the information you received from counsel?

17 A. Did I take into account the areas that
18 should be sampled --

19 Q. Or shouldn't be sampled.

20 A. -- or shouldn't be sampled, and what
21 was the last thing?

22 Q. As best you can recall.

23 A. Did I take into account the areas that
24 should be sampled or shouldn't be sampled to the

1 best of my recollection? Yes.

2 Q. Did you take into account the
3 information and advice that you received from
4 counsel in deciding what areas should and should not
5 be sampled?

6 MR. JAFFE: Same objection.

7 MR. LAMBERT: Can I get a "yes" or "no"?

8 MR. JAFFE: You may get just a "yes" or "no."
9 I'll allow you a "yes" or "no" answer or, of course,
10 an "I don't recall" answer.

11 MR. LAMBERT: Hopefully, right?

12 BY MR. LAMBERT:

13 Q. Have you taken it in account or not?

14 A. Yes.

15 Q. Did you get any advice from counsel
16 with respect to whether or not to sample particular
17 areas off site?

18 MR. JAFFE: I object to that on
19 attorney/client privilege, and I instruct you not to
20 answer.

21 BY MR. LAMBERT:

22 Q. Did you have any discussions with your
23 counsel with respect to whether or not to sample
24 particular areas off site?

1 A. I'm sorry. There's noise --

2 Q. Did you have any discussions with your
3 counsel, either Mr. Jaffe or Mr. Lindland or anyone
4 else who's acting as a lawyer here, with respect to
5 particular areas that either might or might not be
6 sampled off site?

7 MR. JAFFE: I object to that question on
8 attorney/client privilege and work product. I
9 instruct him not to answer.

10 MR. LAMBERT: You object to our knowing
11 whether or not a conversation like that occurred
12 without even getting into the subject matter of it?
13 I mean, that's like saying we do not have to tell
14 you about documents that exist for which a privilege
15 is claimed.

16 THE WITNESS: That wasn't his question.

17 MR. JAFFE: What was his question?

18 THE WITNESS: Maybe she can read it. I think
19 the question was whether or not a conversation
20 happened or not.

21 BY MR. LAMBERT:

22 Q. Yes. Was there a conversation?

23 MR. JAFFE: He answered yes, the conversation
24 occurred, I believe. As far the subject matter of

1 that conversation, that is privileged.

2 MR. LAMBERT: I'm not sure he answered yes to
3 that question.

4 MR. JAFFE: Okay. Ask your question again.

5 BY MR. LAMBERT:

6 Q. Did you have any discussions with
7 counsel with respect to whether or not to sample
8 particular locations off the yard?

9 A. I don't recall.

10 MR. FREEMAN: Excuse me. Can I ask for a
11 clarification? When we use the term "site" so that
12 we'll be clear whether that refers to the Conrail
13 railyard itself or the Super Fund site, which I
14 believe is different than the railyard site.

15 BY MR. LAMBERT:

16 Q. Let me rephrase the question.

17 A. I'm assuming when we use the word
18 site, we use site as defined by the NCP unless
19 Counsel has a different definition for site.

20 Q. Let me rephrase the question.

21 Have you had any conversations
22 with counsel concerning whether or not the Phase 3
23 of the RI work plan should include or not include
24 sampling on locations that are off the Conrail

1 railyard property?

2 A. Yes.

3 Q. Can you recall those conversations?

4 A. No.

5 Q. Can you recall when this occurred?

6 A. No.

7 Q. Can you recall whether they --

8 A. Well, I'm sorry. They -- the

9 occurrence of those conversations, well, I mean,

10 happened between July and the present.

11 Q. Have they -- did they occur since you
12 have received a draft work plan of the E&E work plan
13 for Phase 3 of the RI?

14 A. I don't recall.

15 Q. Does the NCP say anything about the
16 importance of locating the sources of contamination
17 for Super Fund matters?

18 A. For Super Fund what?

19 Q. For a Super Fund matter.

20 Let me -- to save you from --

21 isn't it correct that one of the primary purposes of
22 a remedial investigation is to ascertain the sources
23 of the contamination?

24 Can you answer that without

1 looking at the NCP?

2 A. I'd prefer to look.

3 Q. Can you answer it without looking at
4 the NCP?

5 A. No.

6 Q. We'll do it this way, a closed book
7 test first and then I'll let you look.

8 Can you tell us whether or not
9 the primary purpose of a remedial investigation is
10 to ascertain the sources of the contamination?

11 A. It is one objective of an RI.

12 Q. And that means that you as remedial
13 project manager want to learn the locations of all
14 significant sources of contamination; isn't that
15 correct?

16 A. It's incorrect.

17 Q. Okay. Why is it incorrect?

18 A. You said all significant sources?

19 Q. Yes.

20 A. Obviously we wrote a Record of
21 Decision that came from an RI or part of an RI, and
22 we were able to get an interim remedy out that
23 protects consumers of groundwater in the area of
24 Conrail without finding all of the principal sources

1 or may or may not have found all the significant
2 sources of contamination at the site. And I think
3 that's very important that the Agency be allowed to
4 act quickly without having the burden of finding the
5 location of every source at a site in order to be
6 protective of a healthy environment.

7 Q. Let me try to rephrase my question.

8 During the course of a remedial
9 investigation -- when a remedial investigation is
10 done, it results in a remedial investigation report;
11 is that correct?

12 A. Yes.

13 Q. When that report is submitted, when
14 the final remedial investigation report is
15 submitted, it is supposed to describe all
16 significant sources of contamination within whatever
17 area is defined at the site; isn't that current?

18 A. I don't believe that is correct when
19 you say supposed to. I mean, in some situations you
20 cannot do that.

21 Q. To the extent that investigation
22 allows, it is supposed to -- the whole purpose of a
23 remedial investigation is to find significant
24 sources of contamination at the site; isn't that

1 right?

2 A. That is a major objective in our eyes,
3 yes.

4 Q. Fine.

5 A. It is also to quantify risk, supposed
6 to but --

7 Q. I understand that there are other
8 objectives as well, but that is one of the primary
9 objectives, right?

10 A. Okay. I mean, the way you stated your
11 question was it is the purpose.

12 Q. No, I didn't say that. I said it is a
13 primary.

14 A. Read it back.

15 Q. The record will show what the record
16 shows, but we're now in agreement on this; it is a
17 primary objective of a remedial investigation,
18 correct?

19 A. It is one of the primary objectives.

20 Q. In meeting that objective, in seeking
21 to meet that objective, have you taken into account
22 advice with respect to sources of contamination that
23 you received from counsel?

24 MR. JAFFE: I'm sorry. Can you rephrase your

1 question?

2 BY MR. LAMBERT:

3 Q. In seeking to meet that objective, the
4 determination of significant sources of
5 contamination, have you taken into account advice
6 that you received from counsel?

7 MR. JAFFE: Okay. I just want to explain my
8 objection. A lot of your questions presuppose that
9 advice was given by counsel. I don't know that the
10 witness testified to that, and I've objected to
11 those questions.

12 If, for example, your previous
13 question about whether discussions occurred, you are
14 perfectly permitted to inquire into whether
15 discussions occurred relating to a particular
16 subject but not as to whether advice was given by
17 counsel or as to whether that advice was accepted by
18 the client.

19 MR. LAMBERT: I just flat out disagree. He's
20 the remedial project manager. His job is to define
21 to the extent practicable sources of contamination.
22 Wherever he gets information is fair game on that
23 subject.

24 BY MR. LAMBERT:

1 Q. Now, wait. Let me -- that question
2 calls for a "yes" or "no" answer.

3 Have you taken into account
4 advice of counsel with respect to your objective of
5 defining the location of sources of contamination as
6 to the site as broadly defined in the Record of
7 Decision?

8 A. Yes.

9 Q. I'd like to know what that advice is
10 because I don't think that that's privileged; I
11 don't think it's work product; I don't think it's
12 deliberative process. I think it's fair game.

13 MR. JAFFE: I'm going to object to it and
14 instruct the witness not to answer on deliberative
15 process grounds and work product grounds -- well,
16 maybe not work product but probably work product and
17 attorney/client privilege grounds.

18 BY MR. LAMBERT:

19 Q. Have you received anything in writing
20 from counsel with respect to whether or not to
21 sample particular off site locations in connection
22 with a remedial investigation?

23 A. I don't recall.

24 Q. You do not recall yes or no, or you

1 don't recall receiving any?

2 A. I don't recall whether I received any
3 or not.

4 Q. Am I correct in understanding that
5 you've never personally spoken with anybody who's
6 worked at the Conrail yard?

7 A. You are incorrect.

8 Q. Who have you spoken with?

9 A. I was on the site for a site visit,
10 and as we were driving through the site, a gentleman
11 from the hump tower drove by, and we spoke through
12 our window to each other, and he wanted to know,
13 just essentially wanted to know whether we were with
14 E&E or EPA or whatever.

15 Q. I'd like to hand you back Exhibit 1
16 and ask you to identify the LaRue Street area. Take
17 a pen and circle it, if you would.

18 Would you just put an "LR" in
19 that area? You do not need to initial all of them.
20 We have a few more to do.

21 Now would you do Vistula, please?
22 Put a "V" in that area.

23 Can I see what you've done? I'm
24 sorry. We do not have an extra copy of the map.

1 MR. CUNNINGHAM: That's all right.

2 BY MR. LAMBERT:

3 Q. Okay. Would you take my pen because
4 mine is blue and yours is black and circle the
5 Charles area?

6 A. I get confused with the names of the
7 neighborhoods you're talking about, so without a
8 document to refer to for the exact neighborhoods
9 that we're concerned with, I will be unable to
10 circle the exact neighborhoods.

11 Q. Have you ever been in the Vistula
12 neighborhood?

13 A. Yes, I have.

14 Q. Can you identify it any more precisely
15 than what you've done with the circle that you drew
16 in black?

17 A. Not without a reference.

18 Q. What I'd like you to do just because
19 this map is black and your marking is black is just
20 to draw a line from the circle into an unmarked area
21 of the map and put a "V" there as well so we know --
22 so the record will be clear as to the area you've
23 identified as Vistula.

24 And you can't identify Charles;

1 is that correct?

2 A. Not without a reference right now.

3 Q. How about the County Road One area;
4 can you do that one?

5 A. Not without a reference.

6 Q. How about the Martin Drum Site; can
7 you locate that one?

8 A. No, not without a reference.

9 Q. How about the Walerko facility,
10 W-a-l-e-r-k-o; can you do that one?

11 A. Not without a reference.

12 Q. Can you identify the Tract 69 area?

13 A. Yes.

14 Q. Would you mark it and then draw a line
15 out and lable it "69"? Use mine.

16 A. Thank you.

17 Q. Can you do the car repair shop now?

18 Okay. And now Elkhart

19 Office Machines?

20 A. I wouldn't be able to do that without
21 a reference.

22 Q. Do you know whether it's north or
23 south of the yard?

24 A. It's north of the yard.

1 Q. Object. Can you be any more specific
2 than that?

3 A. I think, as I recall it's north of the
4 yard. Let me see the map.

5 Q. Okay.

6 A. And the name was?

7 Q. Elkhart Office Machines.

8 A. Okay. It's north of the yard.

9 Q. Can you tell us where it is north of
10 the yard?

11 A. Not without a reference.

12 Q. Can you give us any description of
13 where it is in relationship to say Vistula?

14 A. Not without a reference.

15 Q. How about in relationship to County
16 Road One?

17 A. Not without a reference.

18 Q. How about Alco, A-l-c-o, Tool and Die
19 Company; can you tell us where that is?

20 A. No, I cannot.

21 Q. Have you ever heard the name?

22 A. I can't recall.

23 Q. How about the Chizum property,
24 C-h-i-z-u-m?

1 A. It's right in here. Do you want me
2 to --

3 Q. Yes, please.

4 The witness has circled an area
5 and is marking it, I presume, Chizum.

6 A. Do you want me to mark it Chizum?

7 Q. Yes, please. And where is Fibertron?

8 A. I couldn't tell you right now without
9 a reference.

10 Q. Okay. Now, going back to LaRue Street
11 for a minute, could you within the circle that you
12 drew circle the area where contamination has been
13 detected thus far in residential wells, if you know?

14 A. I can't do that without a reference.
15 Actually, hold on. No.

16 Q. Where is the Osceola Drag Strip; do
17 you know that?

18 A. I believe that's on Chizum's property.

19 I'm sorry. I can tell you
20 Vistula and County Road and Charles now.

21 Q. What are you looking at so you can
22 tell me?

23 A. It's in the Record of Decision.

24 Q. All right. Now I have some questions

1 for you that relate to a document I would like to
2 have marked.

3 A. And they are all in the area that I
4 circled Vistula.

5 Q. Right. The entire site is within the
6 area that you circled Vistula, isn't it?

7 A. That's incorrect.

8 Q. Isn't it true having looked at it now
9 that County Road One and Charles are all in the area
10 that you marked Vistula?

11 A. That is correct. They're not within
12 the entire area of the site that you said they were.

13 Q. All right. Fine.

14 I'd like to ask the reporter to
15 mark as Exhibit 2 a document dated July 22, 1992,
16 entitled, "Phase 2 Remedial Investigation Technical
17 Memorandum."

18 (Marked Wilk Deposition
19 Exh. 2)

20 MR. LAMBERT: I'm sorry. I don't have
21 copies. This was produced yesterday. It's probably
22 in your files.

23 MR. FREEMAN: Is it Bates stamped?

24 MR. LAMBERT: Yes, 07676 through 07944. I

1 have a copy of some pages of that, but I didn't -- I
2 couldn't make copies of the whole thing.

3 MR. JAFFE: This the technical memorandum
4 regarding July 22nd?

5 MR. LAMBERT: July 22, yeah.

6 BY MR. LAMBERT:

7 Q. Do you recognize Exhibit 2, Mr. Wilk?

8 A. Yes.

9 Q. Would you explain what a Technical
10 Memorandum is?

11 A. A technical memorandum generally is an
12 interim document that's done during the remedial
13 investigation that gives you -- summarizes data
14 gathered to that point or for a certain periods
15 during the remedial investigation.

16 Q. Who prepared this one?

17 A. Ecology and Environment.

18 Q. I'll be more specific. Do you know
19 who the primary author of the document was?

20 A. Author of the document, again, I don't
21 know the internal workings of Ecology and
22 Environment, so I couldn't tell you who the primary
23 author would be.

24 Q. Did you receive it from somebody at

1 E&E?

2 A. Yes.

3 Q. Who did you receive it from?

4 A. Bridgette Lombardi.

5 Q. Did you review it?

6 A. Yes.

7 Q. Did you approve it?

8 A. I'm uncertain whether we had a formal
9 letter to them approving or disapproving the
10 technical memorandum.

11 Q. Putting aside a formal letter for the
12 moment, did you review it and approve it personally?

13 MR. JAFFE: Objection, deliberative process.
14 Instruct you not to answer.

15 BY MR. LAMBERT:

16 Q. Has it been approved by somebody at
17 EPA?

18 A. I don't know.

19 Q. Is it part of the administrative
20 record?

21 A. For the interim remedy? No.

22 Q. For the site as a whole, is it part of
23 the administrative record?

24 A. We'd have to look at the index of the

1 administrative record.

2 Q. You don't know off the top of your
3 head?

4 A. No.

5 Q. Did you receive a draft of this
6 document before --

7 A. Yes.

8 Q. And did you suggest any changes in the
9 prior draft?

10 A. Yes.

11 Q. Do you recall when the prior draft
12 reached your desk?

13 A. No.

14 Q. Do you recall whether it reached --
15 well, was it something that was already on your desk
16 when you took over as RPM, or was it something that
17 came in after you were the RPM?

18 A. After I was an RPM for this site, you
19 mean?

20 Q. Yes.

21 A. That is correct.

22 Q. That is correct?

23 A. Yes.

24 Q. Do you recall whether it was modified

1 in any way between the draft and the final?

2 A. Yes.

3 Q. Was it modified in response to your
4 suggestions?

5 MR. JAFFE: By "you" you mean Chuck
6 personally, or do you mean the Agency?

7 MR. LAMBERT: No, Mr. Wilk personally.

8 MR. JAFFE: I'm objecting to that on the
9 grounds of deliberative process. You can answer as
10 to the Agency, whether it was modified in response
11 to the Agency.

12 THE WITNESS: It was modified in response to
13 Agency comment.

14 BY MR. LAMBERT:

15 Q. Were your views taken into account?

16 MR. JAFFE: By "you," do you mean the Agency,
17 or do you mean Chuck Wilk personally?

18 MR. CUNNINGHAM: Chuck Wilk personally.

19 MR. JAFFE: I object on deliberative process.

20 BY MR. LAMBERT:

21 Q. Who at the Agency besides you reviewed
22 it?

23 A. I can't recall all of the people. The
24 ORC attorney I believe reviewed it, I think.

1 Q. Anybody other than that that you can
2 recall?

3 A. Not that I can recall sitting here.

4 Q. And the ORC attorney is Mr. Lindland;
5 is that right?

6 A. The ORC attorney at present is
7 Mr. Lindland.

8 Q. He was -- he was the attorney who
9 reviewed it? That's my question.

10 A. I don't believe so.

11 Q. Who reviewed it? Which attorney
12 reviewed it? Who are you referring to?

13 A. I believe it was Jan Carlson.

14 Q. Does this technical memorandum fairly
15 describe the Agency's current views as to the
16 sources of contamination that have been discovered
17 thus far and the extent of migration from those
18 sources?

19 A. As you're aware, there's actual
20 fieldwork going on right now.

21 Q. That is right. I understand. Subject
22 to whatever is learned during the fieldwork.

23 A. So as of the date of this?

24 Q. No. As of today's date, putting aside

1 whatever you have learned, if anything, in
2 connection with the fieldwork that's going on right
3 now, is this a current description of the Agency's
4 view with respect to the location of sources of
5 contamination and the migration that has occurred
6 from those sources to places off site, to the best
7 you can recall, anyway?

8 A. Yes.

9 MR. LAMBERT: Do you have the time?

10 MR. PENDERGAST: It's twenty-five after
11 twelve.

12 MR. LAMBERT: East Coast time.

13 MR. PENDERGAST: No, twenty-five after
14 eleven. Why don't we take a break here, and we'll
15 do some more before lunch; is that all right?

16 MR. JAFFE: Yes. We'll take a short break
17 and go a little further?

18 MR. LAMBERT: Yes.

19 MR. JAFFE: That's fine.

20 (Short recess taken)

21 (Marked Wilk Deposition

22 Exhs. 3 through 10)

23 BY MR. LAMBERT:

24 Q. Would you refer to Exhibit 2, please,

1 and in particular to pages 5-2 and 5-3.

2 MR. JAFFE: Do you have a Bates stamp number?

3 MR. LAMBERT: Yes, EP804085 and 86.

4 MR. FREEMAN: Do you think the Bates numbers
5 may be from the first production? The copy you have
6 may be different numbers.

7 MR. JAFFE: No.

8 THE WITNESS: Well, the copy that I'm reading
9 from has EP07750 and EP07751, and it's from the
10 technical memo dated July 22, 1992, by Ecology and
11 Environment.

12 BY MR. LAMBERT:

13 Q. Is it pages 5-2 and 5-3?

14 A. Yes, it is.

15 Q. Good. All right. Page 5-2, there's a
16 reference there to data gaps. Do you see that?

17 A. There's a section entitled "5.2, Data
18 Gaps," yes.

19 Q. And right under that is a
20 recommendation with respect to continued --
21 continued remedial investigation work in Phase 3; is
22 that correct

23 A. It reads, "E&E recommends that the
24 RIFS process be continued with Phase 3 field

1 investigation."

2 Q. And what's the next sentence?

3 A. "Phase 2 investigation results
4 highlight following data gap."

5 Q. Did you review this section of the
6 technical memorandum before it was approved by the
7 Agency?

8 A. Yes.

9 Q. Did you agree with E&E's
10 recommendation that there be a Phase 3 field
11 investigation?

12 A. Yes.

13 Q. And did you agree that these were data
14 gaps that ought to be filled during a Phase 3
15 investigation?

16 MR. JAFFE: I'll object on deliberative
17 process but allow you to answer.

18 THE WITNESS: Okay. Could you repeat the
19 question, please?

20 MR. LAMBERT: Will you read it back, please?

21 (Question read)

22 THE WITNESS: Yes.

23 BY MR. LAMBERT:

24 Q. Would you look at the last bullet on

1 page 5.2?

2 A. The one that says, "Reported buried
3 tank cars and buried or spilled drums on the Conrail
4 railyard require investigation as to the potential
5 sources to the groundwater contamination
6 identified," is that --

7 Q. Yes, yes.

8 Before you approved -- before you
9 reviewed and approved this document, what, if any,
10 inquiry did you make concerning the reported buried
11 tank cars and reported buried or spilled drums?

12 MR. JAFFE: By "you," do you refer to him
13 personally or the Agency?

14 MR. LAMBERT: I'm referring to him personally
15 first.

16 MR. JAFFE: I'll object on deliberative
17 process grounds, but I'll allow you to answer as to
18 what you reviewed.

19 MR. LAMBERT: No. The question was what
20 inquiries did he make.

21 MR. JAFFE: What inquiries you made, but not
22 as to opinion to those inquiries.

23 BY MR. LAMBERT:

24 Q. What inquiries did you make about the

1 buried tank cars and -- the reported buried tank
2 cars and the reported buried or spilled drums?

3 A. Could you -- can you tell me what you
4 mean by inquiry?

5 Q. Well, did you say to anybody, "What
6 buried tank cars, and what reported buried or
7 spilled drums are being referred to there" or words
8 to that effect?

9 A. Yes.

10 Q. Who did you make that inquiry to?

11 A. Bridgette Lombardi.

12 Q. And what did she tell you?

13 A. She told me that she suspected the
14 existence of buried tank cars and buried and spilled
15 drums on Conrail property.

16 Q. I presume you asked her what was the
17 basis for her suspicions; is that correct?

18 A. I don't recall.

19 Q. You do not recall whether you asked
20 her that?

21 A. That is correct.

22 Q. Did she provide you with what her
23 basis was for believing that there were either
24 buried tank cars or buried or spilled drums?

1 A. Could you repeat the question?

2 Q. Did she tell you what her basis was
3 for believing that there might be buried tank cars
4 or buried or spilled drum?

5 A. I don't remember all of her reasoning.
6 I do recall that while I was at a site visit at the
7 site that we found -- she pointed out structures in
8 the ground that appeared to be -- that could
9 conceivably be top of buried railroad car tanks or a
10 tanker -- what would you call it, Mr. Pendergast?
11 What do you call them, tanker?

12 MR. PENDERGAST: Tank car.

13 THE WITNESS: Tank cars.

14 BY MR. LAMBERT:

15 Q. What about the reported buried or
16 spilled drums; do you recall what her -- what
17 rationale she gave you before you authorized money
18 to be spent to investigate that?

19 A. I don't recall the reasoning.

20 Q. Did she give you anything in writing
21 that you can recall?

22 MR. JAFFE: Let me just object to the
23 characterization that Mr. Wilk authorized money to
24 be spent. The Agency, I think he testified the

1 contracting officer authorized money to be spent.

2 BY MR. LAMBERT:

3 Q. You recommended that money be spent to
4 fill that data gap; did you not?

5 MR. JAFFE: Objection on deliberative
6 process.

7 BY MR. LAMBERT:

8 Q. Yes?

9 A. I wasn't instructed as to whether I
10 may answer or not.

11 MR. JAFFE: You may answer the question.

12 THE WITNESS: What was the question?

13 BY MR. LAMBERT:

14 Q. You recommended that money be spent to
15 recommend whether or not there were buried or
16 spilled drums?

17 A. That is correct.

18 Q. But you can't recall what you took
19 into account before you made that recommendation?

20 A. That's correct.

21 Q. And you can't recall whether you
22 received anything in writing that preceded your
23 recommendation on the subject of buried or spilled
24 drums?

1 A. That is correct.

2 Q. Do you recall what information you
3 were provided with respect to the Fibertron
4 facility, which is referred to on page 5-3 of the
5 exhibit?

6 A. Information I can recall is that there
7 may have been hazardous substances used at that --
8 at that place of business.

9 Q. Can you recall anything else?

10 A. I cannot recall.

11 Q. Was Bridgette the source of that
12 information?

13 A. I cannot recall.

14 Q. What information were you provided
15 with respect to Elkart Office Machines that's
16 referred to in that same paragraph?

17 A. Similar information, that there -- the
18 kinds of work that were conducted there we suspect
19 would entail use of some.

20 Q. Were you provided any information with
21 respect to any investigation that had taken place at
22 the Elkhart Office Machine facility?

23 A. Yes.

24 Q. What were you provided?

1 A. I can't recall.

2 Q. Would it refresh your memory if I
3 suggested that there was soil vapor data collected
4 at that facility?

5 A. Does that refresh my memory?

6 Q. Yes, yes.

7 A. It sounds familiar.

8 Q. Does it refresh your recollection if I
9 suggested that there were -- there were
10 concentrations of carbon tetrachloride detected in
11 soil vapor analysis at that facility?

12 A. Without reviewing the alleged soil
13 vapor data, I couldn't tell you whether it was
14 carbon tet. or not.

15 Q. No, that's not what I'm asking.
16 What I'm asking is whether it
17 refreshes your recollection that you were told that
18 there had been carbon tet. -- whether -- what I'm
19 asking is whether my question refreshes your
20 recollection that you were provided information with
21 respect to potential carbon tet. contamination at
22 that property?

23 A. The information you have given me in
24 your question does not refresh my memory to the

1 point where I could tell you that there was carbon
2 tet. present there.

3 Q. Did you make any additional -- any
4 inquiries of anyone with respect to the Elkart
5 Office Machine property as a potential contributor
6 to the contamination?

7 A. Yes.

8 Q. Who did you make inquiry of?

9 A. Kerry Street.

10 Q. Okay. Anybody else?

11 A. Bridgette Lombardi.

12 Q. Anybody else?

13 A. That's it, that I can recall.

14 Q. Okay. And you can't remember what
15 Bridgette told you; is that right?

16 A. That is correct.

17 Q. Can you recall what Mr. Street told
18 you?

19 A. No, I cannot.

20 Q. Were you provided any information with
21 respect to land farming of septic sewer waste in
22 open fields between County Road One and Vistula
23 Avenue?

24 A. Yes.

1 Q. What information were you provided?

2 A. Information from Bridgette Lombardi
3 that those activities may have occurred on that
4 property.

5 Q. Any other information than that?

6 A. I believe the information was
7 something to the extent where the Chizums had filed
8 or had been permitted to do that work, to do that
9 kind of activity on that site.

10 Q. They had been permitted; is that what
11 you said? I just didn't hear your answer.

12 A. Can you repeat my answer, please?

13 (Question read)

14 BY MR. LAMBERT:

15 Q. The bullet that I've been alluding to
16 on page 5-3 actually refers to two separate areas
17 where land farming might have occurred, and the
18 Chizum property is the second one that's referred to
19 there.

20 My question to you actually was
21 whether or not you had any information with respect
22 to -- whether you were provided any information with
23 respect to the first of those, which is the land
24 farming of septic sewer waste in open fields between

1 County Road One and Vistula, and I was going to get
2 to the Chizum property next. Let's just take one at
3 a time.

4 A. Then obviously I didn't understand
5 your question, so perhaps we can start over on that
6 question.

7 Q. All right, fine.

8 What information were you
9 provided with respect to land farming between County
10 Road One and Vistula?

11 A. I don't recall.

12 Q. Do you recall if you were provided
13 with any information by anybody?

14 A. I don't recall.

15 Q. Okay. And then turning to the second
16 one, which is Mr. Chizum's property, you said that
17 you believe that you were provided information to
18 the effect that Mr. Chizum had been permitted to
19 land farm septic sewer waste on his property; is
20 that correct?

21 A. That's incorrect.

22 Q. All right. What were you told about
23 Mr. Chizum's property with respect to land farming?

24 A. That he had either filed or had been

1 permitted by State Agency to do that.

2 Q. Do you know whether --

3 A. Or that that kind of activity happened
4 there, whether it was permitted or not.

5 Q. Do you know whether any further
6 investigation has been done to determine whether or
7 not land farming occurred on Mr. Chizum's property?

8 A. I can't recall.

9 Q. Do you know whether any further
10 investigation has been done to determine whether
11 land farming of septic sewer waste occurred in the
12 open field between County Road One and Vistula?

13 A. I can't recall.

14 Q. Do you have any experience with
15 respect to chemicals that are commonly used to clean
16 out septic sewer systems, septic systems?

17 A. No.

18 Q. Has anyone ever told you that?

19 A. I'm sorry?

20 Q. Has anyone ever told you that
21 chemicals are typically used in connection with
22 septic systems, to clean septic systems?

23 A. I know that chemicals are used to run
24 and maintain and clean septic systems.

1 Q. Do you know anything about what
2 chemicals have commonly been used for that purpose?

3 A. I can't recall them.

4 Q. Have you ever heard that chlorinated
5 solvents have been typically used for that purpose?

6 A. I can't recall that.

7 Q. Did Miss -- I don't remember
8 Bridgette's last name.

9 A. Lombardi.

10 Q. Lombardi, did Miss Lombardi point out
11 to you that chlorinated solvents were typically used
12 in the Elkhart area in connection with septic system
13 maintenance?

14 A. I can't recall that.

15 Q. You can't recall one way or the other?

16 A. That is correct.

17 Q. Is there any relationship between the
18 data gaps identified in Exhibit 2, the technical
19 memo and the scope of the investigation in the work
20 plan for Phase 3 that's been conditionally approved?

21 A. Yes.

22 Q. What's the relationship?

23 A. That some or all of the data gaps --
24 well, that the work plan was drafted to be able to

1 close some or all of the data gaps expressed in this
2 exhibit.

3 Q. Do you know whether it was drafted to
4 close some or all?

5 A. Yes.

6 Q. What's the answer to that?

7 A. That it was constructed to close some
8 or all.

9 Q. But do you know whether all of the
10 data gaps that are identified in that technical
11 memorandum were also identified as areas to be
12 investigated in the Phase 3 work plan that's been
13 conditionally approved by you?

14 A. I don't recall.

15 Q. Do you recall whether or not the
16 particular data gap that deals with the potential
17 contributions from the off-site sources that we've
18 been discussing that are mentioned on page 5-3 were
19 included in the work plan that you conditionally
20 approved?

21 A. I don't recall.

22 Q. Well, you've recommended that they be
23 included; have you not?

24 You told us -- let me start all

1 over again. You told us that you agreed with the
2 recommendations that are contained in the technical
3 memo, correct?

4 A. I don't know if that's what I said.
5 Can we find that?

6 Q. Well, we're not going to be able to
7 find it. We're not going to take the time.

8 Isn't it true that you did agree
9 with the recommendations that are stated in the
10 technical memo?

11 MR. JAFFE: Object on deliberative process,
12 but you can answer.

13 THE WITNESS: Isn't it true that --

14 BY MR. LAMBERT:

15 Q. That you agreed with E&E's
16 recommendations with respect to closing data gaps?

17 A. Yes.

18 Q. Have you changed your mind since the
19 time that you agreed with that?

20 MR. JAFFE: Same objection, but you can
21 answer.

22 THE WITNESS: I don't know if I have.

23 BY MR. LAMBERT:

24 Q. Have you changed your mind with

1 respect to that particular recommendation that's on
2 page 5-3 that deals with potential off-site sources?

3 MR. JAFFE: Objection, deliberative process.

4 THE WITNESS: Are you instructing me to
5 answer it?

6 MR. JAFFE: You can answer unless I instruct
7 you not to.

8 THE WITNESS: Have I changed my mind --

9 BY MR. LAMBERT:

10 Q. That the data gap relating to
11 potential off-site sources that's described in the
12 second bullet on page 5-3 should be filled during
13 Phase 3 of the remedial investigation?

14 A. Frankly, I don't know if it's
15 necessary to fill every aspect of that bullet in
16 order to be able to write a Record of Decision for
17 final remedy for the site.

18 MR. LAMBERT: Could you read back my
19 question, please?

20 (Question read)

21 BY MR. LAMBERT:

22 Q. The question is have you changed your
23 mind?

24 A. I guess in order to answer your

1 question, what you're asking me, what you're
2 implying is that --

3 Q. I'm not implying anything.

4 A. Well, let me finish my answer.

5 What you're -- what I perceive
6 you as implying is that I -- because I recommended
7 the approval of this technical memorandum that I was
8 of the opinion, that I was of the opinion that each
9 of the -- that this data gap in its entirety that's
10 on page 5-3 that starts out with "the potential
11 contribution," that all of those -- that all the
12 potential contributions would need to be found to
13 successfully complete a remedial investigation in
14 order to be able to write a Record of Decision for
15 the site, and I'm not -- I'm not saying that. I am
16 of the opinion -- can I give an opinion?

17 MR. JAFFE: I'll stop you.

18 THE WITNESS: That it is not necessary to
19 find all potential contributors in order to
20 successfully complete a Record of Decision, in order
21 to make or successfully write a Record of Decision
22 on the site. And I do not believe that that would
23 be inconsistent with the National Contingency Plan.

24 BY MR. LAMBERT:

1 Q. Okay.

2 A. If I might continue with my answer,
3 the --

4 Q. At this point there's no question
5 pending. Your lawyer --

6 A. Well, I'll continue my answer if you
7 would allow me to.

8 It says if we have to go out and
9 find in order to come up with a remedy to clean a
10 site and reduce -- to be able to protect human
11 health and the environment, to go out and find every
12 person who placed a vial or whatever, any little
13 amount into a contaminant bloom and be able to come
14 to a decision on the whole site, and I don't think
15 that that is necessary to maybe -- to write a Record
16 of Decision that's consistent with the NCP.

17 Q. And first of all -- let's go back over
18 that. First of all, your contractor recommended
19 filling this data gap in the second bullet on page
20 5-3; is that correct?

21 A. Obviously it's correct.

22 Q. And as far you know, no further
23 investigation has been done since that
24 recommendation has been made --

1 A. That is incorrect.

2 Q. -- as to any of the areas that are
3 here?

4 A. That is incorrect. As far as I can
5 recall sitting here speaking with you, that that is
6 true.

7 MR. LAMBERT: Could I have my last question
8 back, please?

9 (Question read)

10 MR. LAMBERT: The answer to my question was
11 yes; was it not?

12 Read it back again.

13 (Record read)

14 THE WITNESS: She said, "That is incorrect,"
15 so what is your question?

16 BY MR. LAMBERT:

17 Q. The question was as far you're aware,
18 no further investigation has been done into any of
19 those areas; isn't that correct?

20 A. That is incorrect as far as I can
21 recall sitting here. I mean, I can't recall sitting
22 here whether there's been additional investigation.

23 Q. But you don't know of any today? You
24 can't tell us about any; isn't that right?

1 A. I cannot recall any sitting here today
2 speaking with you under these conditions.

3 Q. Okay, fine. From now on when I say,
4 "As far as you are aware in this deposition," what I
5 mean is, "As best you can recall today sitting
6 here."

7 A. Then I suggest you state that in each
8 of your questions.

9 Q. Okay.
10 You said that it was not
11 necessary to determine whether or not a vial or some
12 other small amount of hazardous substance was
13 spilled in order to write a Record of Decision. Did
14 I hear that correctly? Am I fairly summarizing what
15 you said?

16 A. Yes.

17 Q. Okay. Do you know --

18 A. And if I might add --

19 Q. Let me finish my question.

20 A. I mean, you being in this business I
21 assume for a number of years could certainly
22 understand what would happen to the Super Fund
23 program if each and every person who ever
24 contributed anything to a site were to be found.

1 prior to being able to make a decision on a remedy.

2 Q. Right. I'm not -- I think that we're
3 not -- I think that you don't need to argue with me.
4 I think that you're being too suspicious here. I'm
5 just interested in the facts.

6 What I'd like to know is whether
7 you have any information as to the amount of
8 hazardous substances that were disposed of or might
9 have been disposed of at the Fibertron property or
10 at the Elkhart Office Machine property or in the
11 fields between County Road One and Vistula or on the
12 Chizum property.

13 A. I don't have any information that
14 substances were disposed there.

15 Q. Right. It's a data gap; is it not?

16 A. Well, no. I guess it is, yes.

17 Q. And your contractor, for reasons that
18 I guess we'll eventually find out when we ask
19 Bridgette, recommended that this particular area be
20 investigated, correct?

21 A. That our contractor recommended that
22 that particular area be investigated?

23 Q. Right. That's obviously so?

24 A. That is correct.

1 Q. And her -- the E&E memorandum was
2 approved by EPA, whoever that is, correct?

3 A. Well, EPA is a part of the Federal
4 Government, yes.

5 Q. Right, but the answer to my question
6 is yes?

7 A. Yes.

8 Q. Do you know whether any -- first of
9 all, do you know whether there are tank cars buried
10 on the Conrail yard?

11 A. I don't know.

12 Q. Do you know whether -- if there are
13 any tank cars on the Conrail yard, do you know if
14 they ever contained any hazardous substances?

15 A. I don't know.

16 Q. Do you know whether or not -- have you
17 ever seen any evidence that drums of waste were
18 dumped or spilled on the Conrail yard?

19 A. I don't recall.

20 Q. Now, you said that you believe that
21 you could -- it was your opinion that it wasn't
22 necessary to know all the sources of contamination
23 before you wrote a Record of Decision or words to
24 that effect; did I hear you right?

1 A. Words to the effect that I don't think
2 it's necessary to find all sources of contamination
3 to be able to write a Record of Decision that will
4 be protective of human health and the environment.

5 Q. But it's necessary and the NCP
6 requires that all significant sources of
7 contamination be determined; isn't that right?

8 MR. LAMBERT: Would you just reflect that the
9 witness is reading the NCP.

10 THE WITNESS: Could you give me your question
11 again, please?

12 BY MR. LAMBERT:

13 Q. Isn't it true that -- well, I don't
14 remember what the question was. I'll ask the same
15 question, but I'll use new words.

16 Isn't it true that both the NCP
17 and EPA's guidance on remedial investigations
18 requires whoever is doing the RI to investigate and
19 identify all significant sources of contamination?

20 A. That's different than your original
21 question.

22 Q. Well, take that question. I don't
23 remember what the prior question was.

24 A. What the NCP says is that an RI should

1 find the general characteristics of a site -- I'm
2 paraphrasing; if you want me to, we could find it in
3 the NCP again -- to the extent to which the source
4 can be adequately identified and characterized.

5 Q. All right. So you are supposed to
6 identify and characterize sources?

7 A. To the extent that it can be done.

8 Q. Right. I understand that, but to the
9 extent that it can be done, sources that you have
10 reason to believe may exist you're supposed to
11 characterize and identify; isn't that right?

12 A. I don't think that's what it says.

13 Q. Isn't that your understanding? Apart
14 from what it says, isn't that your understanding,
15 that EPA's job or whoever is doing the RI's job is
16 to identify to the extent possible sources of
17 contamination that may impact the groundwater, may
18 affect the health of the people, may affect the
19 environment?

20 A. It is possible to write and decide --

21 Q. No, no. Answer my question if you
22 will.

23 A. I am answering your question.

24 Q. No, no, answer my question.

1 Can you answer my question?

2 A. Yes. It possible to write and select
3 a remedy for a site that is protective of human
4 health and the environment without finding every bit
5 of contamination that's a source of that
6 contamination.

7 MR. LAMBERT: Could you read back the
8 question?

9 And I ask Mr. Jaffe to, please,
10 instruct the witness to answer my question.

11 MR. JAFFE: Answer his question.

12 (Question read)

13 THE WITNESS: Yes.

14 BY MR. LAMBERT:

15 Q. Okay. Now, what is it that
16 distinguishes -- let me -- do you know whether or
17 not the work plan that is conditionally approved
18 incorporates the investigation that's described in
19 the bullet on page 5-3?

20 A. I don't recall.

21 Q. Let me show you Exhibit 3. This has
22 already been marked. I don't have the cover page
23 for it, but the legend at the top says, "Conrail RI
24 Phase 3 Work Plan, Table of Contents, Revision Zero,

1 October 22, 1992," and it's prepared by Ecology and
2 Environment.

3 A. Well, I assume that the cover of this
4 is probably a draft, and it's a draft E&E, and I
5 don't really care to comment on a draft.

6 I'd like to talk to my attorney.
7 I mean, this a document that I don't believe the PRP
8 should have, and I suspect how they got it was
9 certainly not through a channel or a route that is
10 let me say legitimate.

11 Q. Well, you can deal with your own
12 people on that. We certainly --

13 A. Well, how did you get it?

14 Q. We certainly didn't get it
15 surreptitiously.

16 A. Then how did you get it?

17 MR. JAFFE: Well, that's not a matter for
18 this deposition. The fact of the matter is that
19 they do have it.

20 MR. LAMBERT: And I accept the fact that it's
21 a draft. I'm not claiming it's anything other than
22 a draft.

23 THE WITNESS: Can I talk to you outside?

24 MR. JAFFE: Yes, you certainly may.

1 (Short recess taken)

2 BY MR. LAMBERT:

3 Q. When it was provided to us, it was not
4 provided to us as a draft. It was provided to us as
5 if it were the work plan.

6 A. Did you just record that?

7 So who provided it to you?

8 Q. Well, I want to let Peter know that --

9 MR. JAFFE: Okay. I mean, we can talk at the
10 break or whenever but --

11 MR. LAMBERT: We didn't understand when we
12 received it that we were receiving a draft.

13 MR. JAFFE: Did you receive it from EPA?

14 MR. LAMBERT: Where we got it from, I can
15 talk to you about that later.

16 THE WITNESS: I assume you reviewed these
17 kinds of documents. I mean, it's missing a cover
18 sheet, the top which may have provided information
19 on how you got it. I don't know why that's there or
20 isn't there.

21 It has, "Revision Zero." I
22 assume you've been in the business long enough to
23 know that usually a zero -- a zero revision means a
24 draft document, and I think that Mr. Pendergast and

1 Conrail have made numerous attempts calling me
2 through the --

3 MR. JAFFE: Okay. Okay. Let's hold this off
4 for a minute.

5 BY MR. LAMBERT:

6 Q. We did learn that it was -- we did
7 learn that it was a draft, and that's why we've been
8 asking for the final. I'm not representing that it
9 was ever the final document.

10 All I'll say is that we received
11 it from a legitimate source who provided it to us
12 who believed it was the final document. We didn't
13 go into EPA's files or anybody's files.

14 THE WITNESS: Well, sir, I don't understand
15 how you know --

16 MR. JAFFE: Wait, wait. Why don't you ask
17 your questions, and we'll get on with the deposition
18 then.

19 BY MR. LAMBERT:

20 Q. Yes. Would you turn to --

21 MR. FREEMAN: This is it here.

22 MR. JAFFE: This the only copy you have?

23 MR. LAMBERT: I guess it is. I thought I had
24 another copy with me. I'm sorry to be taking time.

1 Here we go, pages 2-1 -- I'm
2 sorry, page 3-1.

3 MR. JAFFE: It would be helpful, of course,
4 if you could produce or provide copies in the
5 future.

6 MR. LAMBERT: Yes, I appreciate that.

7 MR. CUNNINGHAM: Maybe we can run some off
8 today. I wouldn't mind having one now, wouldn't
9 you?

10 MR. JAFFE: Well, we can -- I don't know if
11 there are xerox machines around here, but I think
12 someone can probably do it at lunch.

13 I'm sorry. Did you ask a
14 question?

15 MR. LAMBERT: No. I just asked the witness
16 if he can look at that page.

17 BY MR. LAMBERT:

18 Q. And all I'd really like to know is
19 whether or not there is a plan to investigate the
20 off-site sources that we've been discussing that
21 were described in the bullet on page 5-3 of the
22 technical memo, the potential off-site sources
23 because they're not alluded to in the draft of the
24 work plan.

1 MR. JAFFE: Are you asking him whether some
2 plan other than what's here exists?

3 MR. LAMBERT: Yes, yes. Well, you know -- I
4 guess I believe it exists because I think the
5 witness testified --

6 THE WITNESS: I'm reading this. Can you be
7 quiet?

8 MR. LAMBERT: Sure.

9 THE WITNESS: Thank you.

10 MR. LAMBERT: If it's going to take a while
11 to answer that question, we might break for lunch
12 because I don't want to rush Mr. Wilk.

13 THE WITNESS: Okay. You can go to lunch, and
14 I can resume reading it when we get back.

15 MR. JAFFE: You can look at it over lunch.

16 What time do you want to get
17 back?

18 MR. LAMBERT: However long it takes him to
19 read it to answer my question.

20 THE WITNESS: Well, I'll go to lunch now;
21 that's fine.

22 MR. LAMBERT: Okay. Why don't you take it
23 with you.

24 MR. JAFFE: Can you tell me what your

1 question is again because it's been a while?

2 THE WITNESS: Frankly, I haven't heard his
3 question.

4 MR. LAMBERT: There was a question. Why
5 don't you read it back?

6 (Question read)

7 (At 12:40 p.m. a luncheon
8 break was had until 1:40
9 p.m.)

10 MR. LAMBERT: Do you want to read back the
11 pending question?

12 (Question read)

13 THE WITNESS: All you'd like to know is
14 whether or not we plan to do an investigation?

15 BY MR. LAMBERT:

16 Q. Um-humn, in those areas.

17 A. Well, as I've stated, we have a draft
18 work plan, and whether or not that will be included
19 in the final work plan, I cannot tell you.

20 Q. Is there a schedule that you're on to
21 finalize the work plan -- will it be finalized
22 before the field work is over?

23 A. Yes. I'm on a schedule.

24 Q. Okay. Can you give us an idea of what

1 that --

2 A. You had a two-part question. Do you
3 want to tell me both parts of your question?

4 Q. I don't remember what the other part
5 of the question was, but is there some --

6 A. Well, I answered yes, that we do have
7 a schedule.

8 Q. Right. And can you give us some idea
9 of what the schedule is?

10 A. I don't recall it.

11 Q. Is it to finalize the work plan this
12 calendar year?

13 A. This calendar year?

14 Q. Yes.

15 A. Yes.

16 Q. Is there any particular reason why it
17 took from -- had taken from October 22, 1992, to the
18 present to finalize the work plan for the Phase 3
19 RI?

20 MR. JAFFE: I object to that question in so
21 far as it asks for deliberative process information.

22 You may answer as to anything
23 other than opinions held by the Agency personnel.

24 THE WITNESS: Your question was is there a

1 reason why --

2 BY MR. LAMBERT:

3 Q. Yes.

4 A. -- it's taking so long to approve the
5 work plan?

6 Q. Right. We understand from discussions
7 last week that you're on a very fast contract, at
8 least for some parts of the project, that that is
9 the part that Conrail is responsible for?

10 A. The reason why is we are still
11 reviewing the draft work plan.

12 Q. Okay. Part of the work plan has been
13 approved with conditions. Do the conditions pertain
14 to the off-site source, potential off-site source
15 investigation that -- that is described on the
16 bullet on page 5-3?

17 A. I don't know.

18 Q. You don't remember?

19 A. I don't recall.

20 Q. Now, going back to something you said
21 earlier, you testified that it was your opinion that
22 it wasn't necessary to characterize and identify
23 every potential source.

24 I'd like to know what it is that

1 in your mind distinguishes potential sources that
2 ought to be investigated from those that needn't be
3 investigated.

4 MR. JAFFE: Is this a general procedural
5 question or specifically to this site?

6 MR. LAMBERT: No. It's a general procedural
7 question.

8 THE WITNESS: It would be the estimated
9 quantity of contamination that's contributed to the
10 environment.

11 BY MR. LAMBERT:

12 Q. And how would you make a judgment as
13 to what that amount might be without first doing
14 some investigation at the area where the source
15 might exist?

16 A. A number of ways. I imagine you can
17 look at documentation as far as waste or product
18 that was used at a site.

19 Q. Okay. Have you done that with respect
20 to Elkhart Office Machines or with respect to the
21 Fibertron facility?

22 A. I don't know if the Agency has done
23 that.

24 Q. You haven't done it personally, I take

1 it?

2 A. Have I sat down with quantities or
3 estimates?

4 Q. Right.

5 A. No, I have not.

6 Q. Have you even thought about quantity
7 personally?

8 A. Yes, I have.

9 Q. What was the business at Fibertron?

10 A. I don't recollect.

11 Q. What information did you consider with
12 respect to Fibertron when you were considering what
13 quantity of material might have been used there?

14 A. I don't recollect.

15 Q. Do you remember when you did this
16 analysis?

17 A. No.

18 Q. How about Elkhart Office Machines;
19 what information did you take into account in
20 assessing what might have been the quantities of
21 materials used at Elkhart Office Machine?

22 A. That I considered that -- well, I
23 suspect that what might be going on there is
24 cleaning of office machines and solvents used to do

1 the cleaning of that.

2 Q. And do you have any view as to what
3 the quantity of solvents might be that was used
4 there during the time that the facility was involved
5 in the cleaning operation?

6 A. I don't remember them.

7 Q. I'm sorry?

8 A. I don't recall them.

9 Q. Have you ever been given any
10 estimates?

11 A. I don't recall.

12 Q. I might have asked you this earlier,
13 but if I have, forgive me for asking again. Were
14 you ever informed of the concentrations of carbon
15 tetrachloride that were found in the soil vapor
16 analyses that were done on the Elkhart Office
17 Machine property?

18 A. Could you repeat the question?

19 Q. Have you ever been informed as to the
20 concentrations of carbon tetrachloride that were
21 detected in the soil vapor analysis that was done at
22 the Elkhart Office Machine property?

23 A. I've been informed of concentrations
24 of substances found using the soil vapor analysis --

1 Q. Does the soil vapor analysis indicate
2 whether there's a sources -- if you get results
3 indicating the presence of a hazardous substance
4 when you do a soil vapor analysis at a particular
5 site, does that mean that there's a source there, or
6 could it mean something besides that?

7 A. There's a potential source there.

8 Q. And what do -- what do you need to do
9 in order to determine whether there is a source
10 there?

11 A. I don't recall.

12 Q. Well, just in general terms, if you
13 get a soil vapor hit, what do you need to do to
14 determine whether or not there is a source in that
15 area?

16 A. You may wish to do a soil sampling and
17 soil analysis.

18 Q. What determines whether or not you do
19 one if you want to determine whether there is a
20 source there?

21 A. I don't recall.

22 Q. Do you know generally? I'm talking
23 about the Elkhart site, but just generally?

24 A. I don't recall.

1 Q. And when you review technical
2 memoranda and documents like that, do you draw any
3 conclusions as to whether there is a source in an
4 area if there's been a positive soil vapor analysis
5 done on that particular spot?

6 A. Do I draw concrete conclusions on
7 that?

8 Q. As to whether there is a source there;
9 that is right.

10 A. I may.

11 Q. And what determines whether you do or
12 you don't if that's all the information that you
13 have?

14 A. Could you repeat your question?

15 Q. Yes.

16 What determines whether -- if all
17 the information that you have as to a particular
18 location is a positive soil vapor analysis hit, what
19 determines whether or not you could conclude from
20 that that there is a source in that immediate area
21 or not?

22 A. I don't know.

23 Q. Has it been your practice on other
24 sites and on this site where you've gotten a

1 positive soil vapor analysis reading to take a soil
2 sample in order to confirm the distance of the
3 source in that area?

4 A. When you mean practice, is it a
5 routine that I would do as a result of having a soil
6 vapor hit, that I would then have to do a soil
7 sampling and analysis? The answer to that question
8 would be no.

9 Q. If you wanted to determine whether
10 there was a source in an area where you had a
11 positive soil vapor analysis result, would you
12 typically take a soil sample in that area to see if
13 there was a source in that area?

14 A. You may.

15 Q. And what would determine whether you
16 would or you wouldn't?

17 A. I don't know -- excuse me. I don't
18 recall.

19 Q. Did you ever know?

20 A. I don't recall.

21 Q. Has anyone ever informed you that TCE
22 was detected in soil samples taken at the Martin
23 Drum site?

24 A. Not that I can remember.

1 Q. Since you've been project manager,
2 have you done anything to try to learn whether
3 either EPA or the Indiana DEM or the Elkhart County
4 Health Department have identified known or suspected
5 sources of contamination in the immediate vicinity
6 of the Conrail yard?

7 And by immediate vicinity, I'm
8 thinking within a half mile of it in any direction.

9 A. Yes.

10 Q. What have you done?

11 A. I've talked to Ken Thiessen about
12 Gemeinhardt. I've reviewed some documents on
13 Gemeinhardt. I have spoken with the IDEM's project
14 manager, and I may have done other things I don't
15 recall at this time.

16 Q. Who was the IDEM project manager that
17 you spoke with?

18 A. Paul Courtney (phonetic).

19 Q. And can you recall what your
20 discussion was with him with respect to other
21 potential sources of contamination in the vicinity
22 of the Conrail yard?

23 A. No.

24 Q. Can you recall whether he provided you

1 with any information that -- that was to the effect
2 that there may be other sources that have been
3 identified as potential sources by other
4 investigators?

5 A. I cannot recall.

6 Q. If he had provided you with such
7 information, would you have evaluated them for
8 purposes of determining whether further
9 investigation was necessary in those locations?

10 A. Yes.

11 Q. Do you remember doing any such
12 evaluation?

13 A. I don't recall.

14 Q. Have you been provided any information
15 about the Osceola Drag Strip apart from the land
16 farming that we discussed earlier?

17 A. Yes.

18 Q. What other information were you
19 provided?

20 A. The information would be that a drag
21 strip exists there, and through my knowledge of
22 activity at drag strips, you would suspect fuel
23 leaks or whatever from a drag strip.

24 Q. Have you ever been told that the

1 Osceola Drag Strip operation denied EPA access to
2 the property to do an investigation there?

3 A. Yes. But I might say that we do have
4 that access now.

5 Q. You have had access? I'm sorry?

6 A. We filed I believe a Unilateral or we
7 have filed an order to Chizum to provide us access.

8 Q. To his property?

9 A. That is correct.

10 Q. When was that done?

11 A. I don't recall the date.

12 Q. About when?

13 A. I don't recall the date. I think that
14 order is probably in public record. I'm sure you
15 could find the date.

16 Q. Now that we know it exists, we'll ask
17 for it. In fact, perhaps, Peter, you could get up a
18 copy of it.

19 MR. JAFFE: I'll see what I can do.

20 BY MR. LAMBERT:

21 Q. Do you happen to know what the general
22 direction of groundwater flow is into and out of the
23 LaRue Street area?

24 A. The general direction of groundwater

1 movement is north from the Conrail site to the LaRue
2 Street area.

3 Q. Do you have the -- I think it's
4 Exhibit 2 there, the technical memo. I have a
5 couple of questions about that.

6 A. Okay.

7 Q. Page 4-5.

8 A. I'm at page 4-5.

9 Q. Object. My question relates to the
10 third paragraph under "TCE Results," and perhaps you
11 might look at paragraphs 1, 2 and 3 so I can ask my
12 question.

13 MR. JAFFE: I'm sorry. What paragraph are
14 you looking at?

15 MR. LAMBERT: It's 4.1.2. It's on page 4-5.

16 MR. JAFFE: Thank you.

17 BY MR. LAMBERT:

18 Q. By the way, just so I don't confuse
19 you, this particular question is not related to
20 LaRue Street. This relates to what is on that third
21 paragraph that I wanted to ask you about, LSA 27, as
22 far you know, not LaRue Street.

23 A. Yes. I've read the paragraph.

24 Q. Let me tell you what the question is

1 and then you can read it again if you want.

2 In the third paragraph there is a
3 discussion of LSA 27, and LSA means lead screen
4 auger; is that right?

5 A. That is correct.

6 Q. The paragraph says in substance, at
7 least in the beginning of the paragraph, that LSA 27
8 was located in order to investigate whether there
9 were potential sources upgradient of Conrail; is
10 that correct?

11 A. That is correct.

12 Q. And then in the next sentence it
13 says --

14 A. As there were a number of others.

15 Q. In the next sentence it says the TCE
16 was detected at a relatively low concentration of 29
17 parts per billion in one interval --

18 A. Um-humn.

19 Q. -- within the LSA 27 pole; correct?

20 A. Okay.

21 Q. Is that right?

22 A. TCE was detected above the detection
23 limit 5 milligrams per liter at relatively low
24 concentration at single depth interval, right.

1 Q. Okay. Then the next sentence says,
2 the last sentence says that this data shows no
3 contributing TCE source existed upgradient of the
4 railyard.

5 First of all, I take it that you
6 had read -- this was one of the things that you read
7 when you read through the technical memo the first
8 time you read it?

9 A. I don't recall if that's true.

10 Q. Okay. Well, it raised the question in
11 my mind where the TCE in LSA 27 came from if there
12 was no contributing TCE source upgradient of the
13 railyard, and I wondered if you could possibly
14 explain that to me.

15 A. Can I explain to you why there is an
16 apparent --

17 Q. Disparity, yes, between the first
18 couple of sentences and the conclusion in that
19 paragraph or first tell me whether or not I'm
20 misinterpreting it and there is no disparity.

21 A. Well, first of all, TCE was detected
22 above the detection limit, which would mean you're
23 pretty confident then --

24 Q. Right, that it's there.

1 A. -- that it's there.

2 Q. Right.

3 A. As to why it was found at that
4 location and then you come to a conclusion that the
5 data shows no contributing TCE source exists
6 upgradient to the railyard, frankly I couldn't
7 explain it based on just this right here.

8 Q. It does appear to be a non sequitur,
9 doesn't it?

10 A. Could you define non sequitur, please?

11 Q. I see you brought your dictionary
12 along.

13 A. Then I will look it up. Thank you.

14 Q. Let me try to define it.

15 It doesn't follow, does it, from
16 the data that's provided in the paragraph?

17 A. It may not.

18 Q. Is there any way in which it could
19 follow from the data that's provided in the
20 paragraph?

21 A. Well, you could have a release of TCE
22 right there at that location, and it was detected at
23 that location, and you don't necessarily need to
24 conclude it was taken -- that it was found

1 upgradient of that location is one explanation.

2 Q. Okay. But the location of a lead
3 screen auger was --

4 A. I believe it's on Conrail property.

5 Q. Well, I guess it might be --

6 A. I believe --

7 Q. -- but if it was located in order to
8 detect upgradient sources, and if that was done
9 successfully, then what it does show is upgradient
10 -- an upgradient source; is that correct?

11 A. It may show.

12 Q. Okay. Did you follow up and ask E&E
13 to explain this potential inconsistency?

14 A. I don't recall. I know it's important
15 to point out I believe that the concentrations found
16 at that location are less than the concentrations
17 found for the groundwater gradient of the site.

18 Q. But they do show a contributing source
19 coming from either that location or from some point
20 upgradient to that location; is that correct?

21 A. They may show that.

22 Q. It has to show one or the other of
23 those two; doesn't it?

24 A. I don't believe that's true.

1 Q. What's the alternative?

2 A. That it may show that.

3 Q. But it has to show one or the other.

4 There is no third alternative; is that correct?

5 It either shows there is a source
6 right at where the lead screen auger was put in, or
7 it shows that there was a source somewhere
8 upgradient to that, right?

9 MR. JAFFE: I'm just going to object to this
10 on the grounds of record review, but I'll allow you
11 to answer the question.

12 BY MR. LAMBERT:

13 Q. Is there a third alternative?

14 A. Well, the third alternative could be
15 laboratory error.

16 Q. Right. Putting aside laboratory
17 error --

18 A. Well, I mean, you asked me for another
19 alternative. I'm just trying to point out that what
20 you say is black and white is not always black and
21 white.

22 Q. Well, aside from lab error, and I take
23 it that the State is open subjected to quality
24 assurance, quality control checks?

1 A. To the best of my knowledge, yes.

2 Q. Okay, page 4-9.

3 A. Okay.

4 Q. And I'm interested in the -- that five
5 line paragraph that's --

6 A. The third one down?

7 Q. Yes, the third one down. It starts
8 out, "In cross section E-E prime."

9 Have you had a chance to read it?

10 A. Yes, I have.

11 Q. Now, this is a similar bit of data,
12 and this was an upgradient or this was supposedly an
13 upgradient location, and there were again relatively
14 low but still existing levels of a hazardous
15 substance detected there, right?

16 A. Based on LSA data and the instrument
17 that was used, right.

18 Q. And the conclusion here was that they
19 show a continuing source in the vicinity of the lead
20 screen augur.

21 A. No, it does not say that. It shows --
22 the data shows a contributing source. I believe you
23 asked a continuing source.

24 Q. I'm sorry. If I did, I misspoke.

1 It does conclude that there is a
2 contributing source in that vicinity?

3 A. The sentence says, "These data show a
4 contributing source in the vicinity of LSA 20."

5 Q. Using your logic from just a few
6 minutes ago, isn't it as likely that this data shows
7 a contributing source upgradient of LSA 20?

8 MR. JAFFE: Object on record review grounds,
9 but you may answer.

10 THE WITNESS: Excuse me. I need to find the
11 drawing of LSA 20.

12 BY MR. LAMBERT:

13 Q. Sure.

14 A. Thank you.

15 I have shuffled my documents
16 here.

17 (Brief discussion had off
18 record)

19 THE WITNESS: Okay. What was your question?

20 BY MR. LAMBERT:

21 Q. Using the logic from your prior
22 answer, doesn't that data point actually show that
23 there is either a source in the vicinity of LSA 20
24 or a source upgradient of LSA 20?

1 A. The logic where I said before that
2 it's not black or white? I mean, with that logic,
3 it would be that there may or may not be one there.

4 Q. Right. And it's not a scientific
5 rational conclusion, is it, from that bit of data
6 that there is a source in the LSA 20 area?

7 A. I don't know.

8 Q. Well, your job is to review reports
9 like this and draw conclusions as to the locations
10 of sources; is it not?

11 A. We have quite a reliance on our
12 contractor to make those conclusions.

13 Q. But you're supposed to review that;
14 you're the person who reviews the contractor's
15 reports to either approve them or not approve them?

16 A. That is correct. I'm one of the
17 reviewers.

18 Q. Right. And that conclusion does not
19 follow from the data that comes immediately before
20 it, does it?

21 A. And as I stated, you know, based on
22 the logic before, it may or may not.

23 Q. Right. So you can't --

24 A. I mean you can't tell me it doesn't

1 follow. I mean, it may follow.

2 Q. Or it may not follow.

3 Isn't it true that you cannot
4 draw the conclusion that there is a contributing
5 source in the vicinity of LSA 20 from the data
6 that's contained in that paragraph?

7 MR. JAFFE: Same objection, but you can
8 answer.

9 (Discussion had off record)

10 THE WITNESS: I think it's important to
11 remember that this lead screen auger data, and we
12 have used lead screen auger data to help guide us in
13 the installation of groundwater monitoring wells at
14 the site.

15 BY MR. LAMBERT:

16 Q. Are you suggesting that it's not a
17 reliable basis for determining the location of
18 sources of contamination?

19 A. That is incorrect. I'm not saying
20 that.

21 It is not as reliable as using
22 groundwater monitoring wells.

23 Q. Okay. But your contractor here relied
24 upon that bit of information to draw their

1 conclusion that there was a contributing source in
2 the vicinity of LSA 20 which I believe is on the
3 very southern edge of the Conrail property.

4 A. Well, I mean, also you're talking
5 about an interim. You're talking about a technical
6 memorandum. We have not -- we have not completed a
7 remedial investigation report, and I think what
8 you're talking about is data that will become more
9 refined as we finish the remedial investigation.

10 And so I think, you know, you're
11 questioning me about this, and I think you're trying
12 to ask me -- you're trying to get me to say that the
13 conclusion is incorrect or the conclusion is -- that
14 the data is no good or something in that respect,
15 and I guess I'm just trying to tell you that you're
16 looking at an interim document of the remedial
17 investigation, and the conclusion as to whether or
18 not contributing sources occur in other places
19 around -- in the vicinity of Conrail would certainly
20 be more finalized when we get done with the remedial
21 investigation report.

22 Q. I think you're again too suspicious of
23 my motives.

24 A. Well, sir, I have suspicions on how

1 you got a document that you presented earlier.

2 Q. We'll explain it to you at the end of
3 the day today, and we will totally relieve you of
4 suspicions, at least about us.

5 But here's what -- here's my
6 point. Isn't it -- here's my question: Isn't it
7 true that the data from LSA 20 is ask -- that the
8 conclusions drawn from that data could be -- it --
9 strike that. I'll try it again.

10 Isn't it true that one could draw
11 two different conclusions from that data; one is
12 that there is a source in the vicinity of LSA 20,
13 and the other is there is a source upgradient of LSA
14 20?

15 A. Yes.

16 Q. Now, if there is a source of TCE
17 upgradient of LSA 20, doesn't the National
18 Contingency Plan and your guidance document require
19 you to try to investigate to determine whether or
20 not such a source exists?

21 A. No.

22 Q. Why not?

23 A. Because the NCP does not require me to
24 do that, and guidance does not require me to do

1 that.

2 Q. But I think you said before that it
3 only didn't require that when there was a basis for
4 believing that the source was insignificant or
5 relatively insignificant?

6 A. That's not what I said about the NCP.

7 Q. Okay. Then why do it --

8 A. Would you like me to read the NCP
9 again?

10 Q. No. I'd like your words, and I'd like
11 to know why it is that you believe that the NCP and
12 your guidance documents do not require you to try to
13 assess whether there is a source of TCE
14 contamination upgradient of the spot where your data
15 shows contamination at the southern boundary of the
16 yard.

17 A. "The NCP requires the lead Agency to
18 characterize the nature of and threat posed by
19 hazardous substances and hazardous materials and
20 gather data necessary to assess the extent to which
21 the releases poses -- excuse me, the release poses a
22 threat to human health or the environment or to
23 support the analysis and design of potential
24 response actions by conducting appropriate

1 investigations to assess the follow."

2 And we can go into "the
3 following," and one of the following is to the
4 extent to which a source can be adequately
5 identified and characterized.

6 Q. Have you done anything, as far you
7 know, to try to identify or characterize whatever is
8 the source of the contamination that was detected in
9 LSA 20?

10 A. I believe we are doing that.

11 Q. Okay. As part of Phase 3?

12 A. I don't recall.

13 Q. Well, is there any other -- is there
14 any other investigation under way other than Phase 3
15 that could provide that information?

16 A. Well, there might be information in
17 Phase 2 that's already been conducted that's talked
18 about in the technical memorandum that would lead
19 you to that -- you know, that would have that
20 effect, and we may be doing things in Phase 3 right
21 now in the field that would lead you to that
22 conclusion.

23 Q. Well, can you -- I mean, you must know
24 what's being done in the field right now.

1 Is there anything being done in
2 the field right now that's being done for the
3 purpose of determining whether or not there is a
4 source of TCE upgradient of the Conrail yard?

5 A. I don't recall.

6 Q. Can you recall any of the fieldwork
7 that's being done as part of the Phase 3 RI, or is
8 this particular element of it elusive?

9 A. For the phase work -- for the Phase 3
10 work, we are doing LSA work, installing groundwater
11 monitoring wells and I believe soil sampling
12 analysis.

13 Q. Do you remember any of the locations
14 where it's being done?

15 A. No.

16 Q. When you review proposed work plans,
17 do you actually get into thinking about whether the
18 locations that have been selected by the contractor
19 are reasonable in the data that's been collected
20 thus far or --

21 A. Yes.

22 Q. And can you recall whether or not you
23 have done that sort of an analysis for whatever part
24 of the Phase 3 investigation relates to the area

1 that is in the vicinity of LSA 20?

2 A. I can't recall.

3 Q. What does it mean when the report says
4 that -- I'm looking at the third from the last line
5 on page 4-9.

6 A. I'm sorry. What was the --

7 Q. The question is what does it mean when
8 the report says that TCE or any other compound was
9 detected -- is detected or was detected below the
10 instrument detection limit?

11 A. Generally an instrument detection
12 limit is -- is the concentration below which an
13 instrument -- you really can't rely on it saying
14 that it's there or not, that it is there. If an
15 instrument can detect -- if an instrument detects
16 something above the detection limit, you have a
17 relative confidence that the instrument is telling
18 -- is actually telling you that it is there.

19 Q. Okay. But if it detects below the
20 detection limit, then you can't draw any conclusion
21 as to presence or nonpresence?

22 A. If it detects it below -- I'm sorry?

23 Q. Yes. If it detects it below the
24 detection limit, you can't draw any conclusion as to

1 wether it's there or not there; is that right?

2 A. You could draw it. I don't know how
3 accurate you would be in your conclusion.

4 Q. You wouldn't want to rely upon it, I
5 take it?

6 A. I wouldn't want to rely on it in an
7 enforcement action, no.

8 Q. You wouldn't want to rely upon it for
9 remedy selection either, would you?

10 A. I may. I don't know the answer to
11 that.

12 Q. Here's Exhibit 4. If you would look
13 at Exhibit 4, Mr. Wilk, and identify it, at least
14 based upon the caption at the top.

15 A. Thank you.

16 It's titled, "Brief Synopsis of
17 Documented Groundwater Contamination Sites in
18 Elkhart County."

19 Q. Have you ever seen it before?

20 A. I don't recall seeing it.

21 Q. That's all I have.

22 Here's another exhibit. This one
23 doesn't have a sticker on it. It must have been
24 skipped. How about calling this one -- why don't

1 you call this 4A. It might make more sense to do
2 that. It's entitled, "RCRA Facility Review for
3 Solid Waste Management Units."

4 (Marked Wilk Deposition
5 Exh. 4A)

6 BY MR. LAMBERT:

7 Q. Have you ever seen Exhibit 4A,
8 Mr. Wilk?

9 A. Your question?

10 Q. Have you ever seen it before?

11 A. I don't recall seeing it.

12 Q. That's all the questions I have on
13 that one.

14 Both the last two documents came
15 from your file, and we came by them legitimately.
16 We got them from Mr. Jaffe.

17 A. Well, at least you did that.

18 Q. The next document is Exhibit 5. This
19 is called a "CERCLIS," C-E-R-C-L-I-S, "Executive
20 Summary." This did not come from your files, but
21 it's a document that we provided to I guess probably
22 one of your predecessors.

23 Have you ever seen that before?

24 A. I don't recall seeing this.

1 Q. Are you familiar with the sort of
2 document that it is? Have you ever seen other
3 documents like it?

4 A. Yes, I have.

5 Q. What's the purpose of a document like
6 that?

7 A. What is the purpose of this document?

8 Q. Yes. What function does a document
9 like that serve? Why is it created?

10 A. I don't recall.

11 Q. What is CERCLIS?

12 A. I don't recall what CERCLIS stands
13 for. I mean, I don't know the time of CERCLIS.
14 CERCLIS is I believe a list of sites where waste is
15 managed in the United States.

16 Q. Do you see on the second page, which
17 is a potential hazardous waste site preliminary
18 assessment done by EPA, that the substance that's
19 possibly present includes TCE?

20 A. Okay. On line 04 under description of
21 substances possibly present, known or alleged, it
22 says, "TCE" and it's parens, "Trichloroethylene,
23 closed parens. "111 TCA," which is parens, "111
24 Trichloroethane," closed parens.

1 Q. Included as the fourth page of the
2 exhibit is a memo handwritten from someone named
3 Kurt Gilliam to Harry Atkinson dated August 14,
4 1989.

5 Do you know either Mr. Atkinson
6 or Mr. Gilliam?

7 A. No.

8 Q. Do you know who either of them are?
9 Do you recognize their names, in other words?

10 A. No.

11 Q. The memo refers to information
12 attributed to Ken Thiessen that we've mentioned
13 earlier, correct?

14 A. The memo says, "The EPA," parens, "Ken
15 Thiessen," closed parens, "believes Walerko Tool and
16 Engineering or Engraving is probably responsible,"
17 so forth and so on.

18 Q. Why don't you read the rest.

19 A. "For the Lushler Street" --

20 Q. Lusher.

21 A. That's an "h"? "Groundwater
22 contamination in Elkhart."

23 Q. And it goes on to say that the area
24 groundwater is contaminated with TCE and TCA? It

1 says that. I'm not saying that it's true, but
2 that's what it says, right?

3 A. I concur.

4 Q. And it goes on to say that former
5 employees have stated to Mr. Thiessen that it was
6 common practice to pour waste chemicals on the
7 ground behind the plant. It says that, right?

8 A. Why are we like passing this -- I
9 mean, isn't this in the record?

10 Q. It's not. I mean, I don't know
11 whether it is or isn't.

12 A. Didn't you just put it in the record?
13 Didn't you put the sticker on it and say this is an
14 exhibit?

15 Why are we talking back and forth
16 about what it -- why are you asking me to read it in
17 again to the record?

18 Q. Because I just like to take up the
19 extra time.

20 A. Okay.

21 Q. We have to include a record of text
22 here that somebody else can read.

23 A. So what was your question?

24 Q. The memo attributes to Mr. Thiessen

1 the information that former employees have stated --
2 former employees have stated that waste was dumped,
3 liquid waste was dumped behind the plant for --
4 actually it says for a period of years. I don't
5 know what it says, but it attributes to former
6 employees' information relating to dumping, correct?

7 A. The memo states that according to
8 Mr. Harry Atkinson or from Kurt or whatever, the
9 authors of this memo are saying that Ken has told
10 them that; Mr. Thiessen has told them that.

11 Q. Okay. Now, do you know where Walerko
12 is?

13 A. Didn't you ask me that before?

14 Q. Yes. I don't remember what you said.

15 A. Oh, I think I said no.

16 Q. Okay. Do you know where Lusher Street
17 or Lusher Avenue is in relationship to --

18 A. I don't recall.

19 Q. -- in relationship to the Conrail
20 yard?

21 A. I can't recall without looking at a
22 map. I couldn't tell you.

23 Q. Let me ask you to assume that the
24 Walerko facility is upgradient of the Conrail yard

1 and moreover upgradient of the LaRue Street area.
2 And using the test that you have described before
3 about when you investigate sources and when you
4 don't investigate sources, and again on the
5 assumption that it is upgradient of both of the
6 locations that I've described, isn't it appropriate
7 that the -- that this sort -- this potential source
8 be investigated given the information that's in the
9 package there to determine whether or not it is a
10 source of contamination either to the yard or to the
11 LaRue Street area, again on the assumption which I
12 would not -- which I have asked you to base it on,
13 the assumption where it is located, that it is
14 upgradient.

15 A. Am I supposed to answer?

16 MR. JAFFE: You can answer.

17 BY MR. LAMBERT:

18 A. You're asking me to assume that this
19 facility is upgradient of Conrail?

20 Q. Of Conrail and upgradient of the part
21 of Conrail that's upgradient of LaRue Street.

22 A. Okay.

23 Q. And --

24 A. And I'm supposed to conclude --

1 Q. And you have a report attributed to
2 Mr. Thiessen; I don't know whether or not he said
3 the things --

4 A. Well, that's what the two gentlemen
5 say.

6 Q. Right, but attributed to Mr. Thiessen
7 that there has been a practice at that facility of
8 dumping TCE or TCA in the back lot. Does that
9 justify investigation under the standards that you
10 articulated before for source identification at the
11 site?

12 A. No.

13 Q. Why not?

14 A. Because you've just shown me a memo
15 that's handwritten by a couple of people who are
16 saying that someone told him -- someone told someone
17 who told them that that's what's going on.

18 Q. Okay. Now, how does that differ from
19 whatever information has been taken into account in
20 authorizing the expenditure of money to investigate
21 whether drums were spilled or dumped at a particular
22 part of the Conrail yard?

23 A. I don't know.

24 Q. Next I'd like to show you Exhibit 6

1 which is an excerpt from the Weston report dated
2 September 16, 1986, that was produced to us from
3 your files yesterday. I'd like to know whether
4 you've ever seen this one.

5 MR. FREEMAN: Excuse me. What are the Bates
6 numbers?

7 MR. LAMBERT: 8498 to 8508.

8 MR. FREEMAN: Thank you.

9 THE WITNESS: What was your question; had I
10 ever seen this before?

11 BY MR. LAMBERT:

12 Q. Right.

13 A. I don't recall seeing this.

14 Q. Okay. On the second page of the
15 exhibit, it states that there is a carbon
16 tetrachloride contamination problem in the LaRue
17 Street area that may possibly originate from the
18 small operation of Alco, A-l-c-o, Tool and Die
19 Company located at the corner of West Franklin
20 Street and 28th Street.

21 Do you know whether anything was
22 ever done to investigate whether there is a source
23 of contamination of carbon tetrachloride at the Alco
24 Tool and Die Company?

1 A. I do not know.

2 Q. Exhibit 7 is a memo to Mr. Dalga from
3 David Klatt, K-l-a-t-t, at Ecology and Environment
4 dated June 14, 1990. And I'd like to know whether
5 you've ever seen that document.

6 Oh, you want the Bates stamp
7 number, don't you?

8 MR. FREEMAN: Please.

9 MR. LAMBERT: I'll give them to you in a
10 second.

11 MR. FREEMAN: Okay.

12 MR. JAFFE: 06193 is the first one.

13 MR. FREEMAN: Thank you.

14 THE WITNESS: I don't recall seeing this.

15 BY MR. LAMBERT:

16 Q. Let me now hand you Exhibit 8, which
17 is a document entitled, "Elkhart County Groundwater
18 Protection Groundwater Contamination Case Synopsis,"
19 and it's Bates stamped 6747 through 6757.

20 Same question, have you ever seen
21 it before?

22 A. Didn't you just show me this?

23 Q. No. If I did, it was another copy.

24 A. I think you did, so I must have seen

1 it before. It didn't have the cover page on it. I
2 don't know the reason why you showed me one without
3 a cover page.

4 Q. It appears to be a different document.
5 It seems to be similar, but it isn't --

6 A. Well, it's the same type.

7 Q. Yes, maybe it's a different draft.
8 Okay. Well, I take it you haven't seen this version
9 of this document either; is that correct?

10 A. That's correct.

11 Q. Next is a letter to Mr. Dalga from GT
12 -- from Conrail dated June 17, 1991. It's been
13 marked Exhibit 9. It's Bates stamped 8250 through
14 8263.

15 Have you ever seen that document
16 before?

17 A. Yes, I have.

18 Q. When did you first see that?

19 A. I don't recall.

20 Q. Have you ever read it all the way
21 through?

22 A. Word-for-word I don't believe I have.

23 Q. Next let me show you an exhibit that's
24 been marked Exhibit 10 dated September 27, 1984,

1 addressed to Mr. Browning at EPA from Martin Risch,
2 Risch R-i-s-c-h, Bates stamped 7059 through 7061.

3 Have you ever seen this?

4 A. No.

5 Q. I've shown you a series of documents
6 that were produced to us coming from either your
7 files or from the RPM's files; I'm not sure which.

8 A. It came from the Agency files.

9 Q. Okay. It didn't come from the RPM's
10 file?

11 A. I don't know.

12 MR. JAFFE: Just for the record, we produced
13 not only files from Mr. Wilk -- documents from
14 Mr. Wilk's files pursuant to your request but also
15 facility files and some from the administrative
16 record.

17 MR. LAMBERT: Pardon?

18 MR. JAFFE: Some from the administrative
19 record.

20 BY MR. LAMBERT:

21 Q. Okay. I take it, Mr. Wilk, that you
22 haven't had an opportunity to go through all of
23 EPA's files that relate to the Conrail yard, as of
24 yet at least?

1 A. That is correct.

2 Q. Are you aware that EPA commissioned a
3 regional groundwater study back around 1986 in the
4 Elkhart area?

5 A. I don't recall.

6 Q. Have you ever been informed of a -- an
7 investigation that was done that concluded in words
8 or in substance that there were -- there was a wide
9 spread problem in the Elkhart area involving
10 chlorinated solvents, especially TCE?

11 A. I don't recall.

12 Q. Have you ever seen reports or been
13 told about reports that were commissioned by EPA or
14 by IDEM that conclude in either words or substance
15 that it's probable that many of the small industries
16 in the Elkhart area at one time or another have
17 spilled or dumped chlorinated solvents?

18 A. No.

19 Q. I have just one more question.

20 You've mentioned earlier today, I
21 guess it was this morning then or maybe it was
22 yesterday afternoon, that when I asked you questions
23 about steps being taken to protect the workers who
24 were doing the third phase of the RI what, if any,

1 special steps have been taken to protect them given
2 the fact that this was a working railyard, you
3 mentioned that you had requested pilots from Conrail
4 in order to make sure they didn't run passing trains
5 and the like while they're on the yard.

6 Was that the gist of your
7 testimony?

8 A. The gist of my testimony would be that
9 we have contacted Conrail and let them know in as
10 far in advance as we can or could as to what kinds
11 of activities would be going on at their railyard
12 and that -- or are scheduled and for them to be able
13 to provide people who are representing the U.S. EPA
14 with pilots or guides or whoever is necessary to be
15 safely conducted around the railyard and to prevent
16 injury to the railyard equipment.

17 Q. You didn't mean to suggest that you
18 had ever requested pilots be assigned to your crew,
19 did you?

20 A. I believe I have verbally requested
21 that.

22 Q. Who did you --

23 A. Of Mr. Pendergast.

24 Q. Can you remember when that request was

1 made?

2 A. It was while we were mobilizing for
3 fieldwork.

4 Q. When was that?

5 A. Late November.

6 Q. Is there any written EPA policy again
7 providing the owner of a piece of property that
8 happens to be on the Super Fund site a description
9 of where sampling is to occur when the locations
10 have been conditionally approved but not finally
11 approved?

12 A. Could you repeat your question?

13 MR. LAMBERT: Could you read it back?

14 (Question read)

15 THE WITNESS: I am not aware of any EPA
16 guidance that says an RPM should not tell whatever
17 the person who you just described.

18 BY MR. LAMBERT:

19 Q. Is there a reason why you have been
20 reluctant to do so?

21 A. I have been reluctant to give Conrail
22 a copy of a draft work plan for Phase 3 of the RIFS.

23 Q. You've also been reluctant to describe
24 where samples, even out loud without providing a

1 plan, provide information where samples were to be
2 taken on the yard; isn't that true?

3 A. I was reluctant to give a draft copy
4 of a work plan to a PRP.

5 Q. You were advised --

6 A. And obviously you know the reason why
7 the Agency does not release a draft copy of a
8 document to PRP; it's not a final copy. It's not a
9 matter of public record.

10 Q. But Conrail told you that the reason
11 why it was interested in the locations was to make
12 sure that if you wanted to sample where there were
13 active tracks, that arrangements could be made in
14 advance to divert traffic and wanted to know in
15 advance if you were thinking of drilling holes in
16 places where there are underground electrical lines
17 and the like.

18 In that circumstance, is there
19 any policy reason against providing information even
20 if it's not final but simply subject to further
21 change?

22 MR. JAFFE: I object that it's irrelevant,
23 but you can answer.

24 THE WITNESS: I don't know if I should answer

1 an irrelevant question.

2 MR. JAFFE: You're permitted to answer an
3 irrelevant question.

4 I just do not see how this line
5 of questioning is calculated to lead towards --

6 MR. LAMBERT: I'll tell you why. I really
7 think that there is lots of evidence here, and there
8 could be more, that Conrail has been chosen as -- by
9 Conrail I mean the yard; I don't mean necessarily
10 Conrail by itself -- as the target here, and I think
11 that the Agency has closed its eyes to other
12 potential sources of contamination that are referred
13 to frequently in its own document.

14 And I think that for some reason
15 which we do not understand Conrail is not being
16 treated like PRPs at other sites that I've been
17 involved with and other sites that it's been
18 involved with where it's trying to be cooperative.

19 In this case, we have no interest
20 in knowing sampling locations other than that we can
21 make arrangements in advance to provide protection,
22 absolutely none. And we're being told that we can't
23 tell you about it because it's not final yet.

24 It's just not our experience that that happens, and

1 we're a little bit concerned that the two issues are
2 somehow related to each other.

3 MR. JAFFE: Well, your concerns aside and the
4 legal arguments aside, this deposition is for
5 discovery of information which is relevant to the
6 litigation that's before us today; and therefore the
7 areas of proper relevance of things like consistency
8 with the NCP, which I completely understand asking
9 about, costs that have been incurred if that's
10 something you want to inquire into or --

11 MR. LAMBERT: Bias of --

12 MR. JAFFE: But whether -- but whether -- I
13 don't see how whether Mr. Wilk has given information
14 two days ahead of time or ten days ahead of time or
15 at the moment that they're arriving at the railyard
16 has anything to do with inconsistency with the
17 National Contingency Plan.

18 MR. LAMBERT: No. It has to do with the
19 objectivity of the investigation. It may have to do
20 with that. I'm not drawing any conclusions, but
21 it's just somewhat extraordinary, and I feel obliged
22 to ask if there is some rationale for this that has
23 to do with the conducting of the RI that explains it
24 because there are costs associated with this, too,

1 as a matter of fact, that probably you're going to
2 try and recover from us. If we don't know when
3 people are coming in sufficient time to provide
4 pilots, the crews stand around waiting for the
5 pilots to show up. If we have more advance notice,
6 pilots are ready to go, so there's your connection.
7 That's --

8 MR. JAFFE: As you know quite well, the
9 question is whether the costs are consistent with
10 the NCP and not whether they are the lowest costs
11 that can be incurred.

12 MR. LAMBERT: Or even whether they're
13 reasonable, right?

14 MR. JAFFE: Or even whether they're
15 reasonable. And I'm not actually cutting off your
16 line of questioning because relevance is not the
17 thing I really care to cut off.

18 MR. LAMBERT: We're trying to mitigate Penn
19 Central's damages here.

20 MR. JAFFE: That's up to you. I'm not
21 cutting off your line of questioning. I'm just
22 putting on the record that I don't see how it's
23 relevant.

24 MR. LAMBERT: Can we have an answer to the

1 question? Your position is reserved.

2 THE WITNESS: Can you tell me the question?

3 BY MR. LAMBERT:

4 Q. Is there any reason why we can't have
5 this information even though the locations may be
6 subject to change?

7 A. The reason why is the locations may be
8 subject to change.

9 Q. I have no further --

10 A. I mean, I think I described to you
11 that LSA -- I mean, one of the reasons you use LSA
12 is to make a decision. We have -- I'm sorry. We
13 have equipment out there that does lead screen auger
14 drills, and we have equipment out there that's a
15 field laboratory, and as we go through the yard
16 getting samples from the lead screen auger, it
17 changes, and it changes in real time as to where the
18 next hole will be drilled, and the reason we do that
19 is to minimize the costs involved in a remedial
20 investigation. And actually I think Conrail should
21 be sensitive to minimization of costs. It would
22 make us place less groundwater monitoring wells in
23 this manner.

24 And I think that it's being

1 portrayed here that I have been -- that I have been
2 uncooperative with Conrail as far as this issue of
3 gaining access and gaining safety pilots and such,
4 and I feel I have not. I have provided Conrail --
5 and I think there's some problems with Conrail's
6 internal communication with their people in the
7 field and so forth that they think that we're not
8 providing them as much notice as we can in order to
9 help them with their doing their scheduling for
10 their people.

11 As a case in point, I believe
12 earlier this week Conrail or you had asked me why
13 haven't they gotten the schedule on it, and when in
14 fact the schedule was faxed to Mr. Pendergast last
15 Friday for work going on this week in an effort to
16 keep Mr. Pendergast informed and be able to have him
17 schedule.

18 And, in fact, a schedule was
19 faxed yesterday to Mr. Pendergast to let him know
20 where the next period -- the next succession or next
21 ten-day period of fieldwork going on that's going to
22 start in five days, when and where people will be.

23 So I think your portrayal of me
24 as being -- of somehow treating Conrail differently,

1 I mean, I don't agree with.

2 MR. LAMBERT: I propose to stop here. We do
3 not agree with that. We do not agree with some of
4 the things that you've said about the details
5 either, but there's no point in pursuing this during
6 the deposition, pursuing it further during the
7 deposition.

8 We'll continue to cooperate with
9 EPA as best we can, but we could cooperate better if
10 we had some indication of at least where the present
11 work plan which exists in draft shows work is going
12 to be done even if when people get in the field they
13 decide that they would prefer a spot some distance
14 away from that. There is, I presume, a plan that's
15 being given to these people that's quite precise
16 though subject to change, and it's hard for me to
17 understand why that's not being made available to
18 us.

19 MR. CUNNINGHAM: Well, for the benefit of
20 those that are peripherally involved, including my
21 client, I'd appreciate if you guys would settle this
22 problem off the record because it's costing money.

23 MR. LAMBERT: I'll stop at this point. No
24 further questions for now.

1 MR. JAFFE: Okay. Why don't we take a brief
2 break. I assume you have some questions?

3 MR. FREEMAN: Brief.

4 (Short recess taken)

5 CROSS EXAMINATION

6 BY MR. FREEMAN:

7 Q. Mr. Wilk, my name is Bob Freeman. I'm
8 here on behalf of Gemeinhardt Company, Inc. I just
9 have a few questions for you today.

10 I'd like to ask you to refer back
11 to Exhibit 2 which we looked at earlier.

12 Did you -- okay. And in
13 particular if you could turn to page -- well, before
14 you turn to any page, I believe earlier you said
15 that you had reviewed this document before it was
16 finalized; is that correct?

17 A. That is correct.

18 Q. And that you agreed with the
19 conclusions which were stated in this document?

20 A. Yes.

21 Q. I'd like to draw your attention to
22 page 4-4, the second full paragraph, the final
23 sentence.

24 A. Is that the paragraph that begins

1 with, "In the LaRue Street residential area"?

2 Q. Yes.

3 A. Okay.

4 Q. Could you read the last sentence of
5 that paragraph?

6 A. "These data show that no carbon
7 tetrachloride source exist directly upgradient of
8 the railyard."

9 Q. And so you agreed with that conclusion
10 which was set forth in the technical memorandum; is
11 that correct?

12 MR. JAFFE: Are you asking him whether he
13 personally agrees with it?

14 MR. FREEMAN: Well, let's see whether he can
15 answer the question as --

16 MR. JAFFE: By "you," do you mean the Agency
17 or Chuck Wilk?

18 MR. FREEMAN: I'm asking -- I can ask for
19 both.

20 MR. JAFFE: You can ask both. I'm just
21 curious as to which one you are asking.

22 BY MR. FREEMAN:

23 Q. First can you answer on behalf of
24 Chuck Wilk?

1 MR. JAFFE: I object to that on deliberative
2 process grounds, but I'll allow you to answer.

3 THE WITNESS: I agree with it for the intent
4 -- for the purposes of the technical memorandum.

5 I guess, as I said earlier, a
6 remedial investigation report will be drafted and
7 written and approved by the U.S. EPA, and, you know,
8 we talked a lot about what the statements in --

9 BY MR. FREEMAN:

10 Q. Mr. Wilk, if I can interrupt, is your
11 answer maybe that there may be subsequent data which
12 may change your evaluation of this conclusion; is
13 that correct?

14 A. That is correct.

15 Q. Okay. And would your answer be any
16 different if you were answering on behalf of
17 U.S. EPA?

18 A. I don't think so.

19 Q. Okay. And are you aware of any facts
20 through the present which would change or which
21 would contradict the statements that are set forth
22 in the last sentence of the second paragraph on page
23 4-4 of Exhibit 2?

24 A. Am I aware of any current additional

1 facts?

2 Q. Yes.

3 A. No, I am not.

4 Q. Okay. Now I draw your attention to
5 page 4-5, under the section marked 4.1.2, the third
6 full paragraph, and could you, please, read the last
7 sentence of that paragraph?

8 A. Is it the paragraph that starts out,
9 "LSA 27"?

10 Q. Yes.

11 A. And you want the last sentence?

12 Q. Correct.

13 A. "This boring was extended to a depth
14 of 83 feet" -- I'm sorry. That's not the last
15 sentence. "These data show that no contributing TCE
16 source exists upgradient of the railyard."

17 Q. And are you aware of any fact through
18 the present that contradicts that statement?

19 A. Allow me to read the entire paragraph.

20 Q. Please take as much time as you need.

21 A. Okay. What was your question?

22 Q. Are you aware of any facts as of
23 today's date that would contradict that statement?

24 A. Not that I'm aware of.

1 Q. Now I turn your attention to page 5-2
2 of the same exhibit, and I draw your attention to
3 the paragraph numbered 6.

4 A. Excuse me just a minute.

5 (Discussion had off record)

6 BY MR. FREEMAN:

7 Q. On page 5-2, paragraph numbered 6,
8 which is the 6th numbered paragraph under section
9 5.1, which actually begins on page 5-1.

10 A. Okay.

11 Q. Do you see that -- I'm sorry, the
12 paragraph numbered 5.

13 A. Okay.

14 Q. Can you, please, read that paragraph?

15 A. The paragraph says, "LSA and
16 monitoring well data indicate a railyard source of
17 the groundwater contamination in the LaRue Street
18 area."

19 Q. And when you reviewed this technical
20 memorandum before it was issued, did you agree with
21 that conclusion?

22 A. Yes.

23 Q. Are you aware of any facts today which
24 contradict that conclusion?

1 A. No.

2 Q. Are you aware of any facts which
3 changed in any way your evaluation of that
4 conclusion?

5 A. No.

6 Q. Okay. Mr. Wilk, is it possible for
7 you to -- when thinking about the -- what is known
8 as the Conrail Super Fund site to distinguish among
9 areas such the railyard itself, the LaRue Street
10 area, the Vistula Avenue area, the County Road One
11 area; is it possible for you to do that?

12 A. I don't understand your question.

13 Q. In thinking about the site, can you
14 distinguish among different locations or areas
15 within the entire Super Fund site?

16 A. Yes.

17 Q. And is it possible for you to
18 distinguish in a sense that certain activities will
19 be undertaken in certain areas within the Super Fund
20 site and will not be undertaken within certain other
21 areas of the Super Fund site; is that correct?

22 A. Certain activities, certain field
23 activities?

24 Q. Correct.

1 A. Yes.

2 Q. And is it possible for you at this
3 time to evaluate the degree of attention that EPA is
4 paying to different areas within the Super Fund
5 site?

6 A. No.

7 Q. Is it possible for you to distinguish
8 the level of activity that EPA will engage in in
9 different areas of the Super Fund site?

10 A. I'm having difficulty with
11 understanding what you mean by level of activity. I
12 guess I'm not understanding your question.

13 Q. Would it be simpler if I said can you
14 distinguish to the extent that fieldwork will be
15 conducted between the amount of fieldwork that will
16 be conducted within different areas of the Super
17 Fund site?

18 A. I still do not understand your
19 question.

20 Q. How about if I asked you whether you
21 can distinguish whether costs will be incurred for
22 field activities for different areas at the Super
23 Fund site?

24 A. At this time, no.

1 Q. In the past?

2 A. I do not know if you could go through
3 our cost records to be able to say that this --
4 well, I imagine it would take a great deal of effort
5 to be able to say that this lead screen auger costs
6 so much; this lead screen auger costs so much
7 because you'd have to -- I mean, I would think you'd
8 have to go through and try to figure out the amount
9 of time it took at each of those activities.

10 I mean, the cost is associated
11 with anything to be a monumental task, and I think
12 I'd like to be able to say that when the EPA asks or
13 goes after and requests costs from PRPs, I don't
14 believe that we are required to provide that kind of
15 information.

16 Q. I'm simply asking whether you can make
17 an estimate. For example, if I asked you to
18 estimate assuming 100 percent costs incurred to date
19 for the Super Fund site, what percent were incurred
20 for activities conducted on the railyard itself; can
21 you make some rough estimate?

22 MR. JAFFE: I object to the question that it
23 calls for a legal conclusion, but you may answer.

24 THE WITNESS: While I sit here I could not.

1 BY MR. FREEMAN:

2 Q. Would you estimate that it is greater
3 than 50 percent?

4 A. No, I could not make an estimate.

5 Q. Could you make any estimate
6 distinguishing among the other areas I mentioned
7 earlier, Vistula area, LaRue Street, County Road
8 One, Charles Street?

9 A. No.

10 MR. FREEMAN: I have no further questions.

11 MR. JAFFE: I have just a couple of
12 questions.

13 CROSS EXAMINATION

14 BY MR. JAFFE:

15 Q. Mr. Wilk, are you familiar with the
16 National Contingency Plan?

17 A. Yes, I'm familiar with the National
18 Contingency Plan.

19 Q. How would you characterize your level
20 of familiarity with the National Contingency Plan?

21 A. I would characterize my level of
22 familiarity with the National Contingency Plan
23 roughly to other remedial project managers as very
24 good.

1 Q. Yesterday and today you were asked a
2 number of questions by various counsel about the
3 National Contingency Plan, and it appears that you
4 could not answer them without consulting the plan
5 itself, the written text.

6 Does that interfere with your job
7 at all, and if so, how?

8 A. It does not interfere with my job. I
9 think I just -- your question before, the question
10 I'm answering now was that to give you an idea of my
11 familiarity with the NCP, and I responded that I
12 have a very good understanding of the NCP, I would
13 say I have a better understanding than most remedial
14 project managers of the NCP.

15 The reason during this -- this
16 deposition that I needed to refer to the NCP is
17 because I would like to give an accurate response to
18 people asking me about the NCP, and I do that in my
19 daily work. I review the NCP carefully. I review
20 the preamble to the final NCP rule making carefully
21 and frequently. I review the preamble to the
22 proposed NCP carefully, carefully and often. I have
23 been using the NCP for three years in its present
24 state and because it has not been amended since that

1 time substantially.

2 Q. You were also asked by counsel a
3 number of times to identify on a map various areas
4 at the Conrail site as it's defined by the NPL. You
5 said that you were unable to do that in some cases.

6 Do you believe that that
7 interferes with your ability to perform your duties
8 as an RPM?

9 A. No. When I review these documents, I
10 have a map in front of me that will tell me where
11 all of those neighborhoods are and these other
12 things I'm looking at. If I don't know it when I'm
13 reviewing it, I refer to a map to be able to help me
14 do that.

15 I think during that point in this
16 deposition, I didn't take the opportunity to review
17 a map in answering that question about where the
18 different neighborhoods were, and so that's why I
19 may have identified them correctly or incorrectly,
20 but I do not think that it has a negative bearing on
21 my ability to do the project management work for the
22 site.

23 Q. Are you familiar with the Record of
24 Decision for the Conrail site?

1 A. I have read the Record of Decision for
2 the Conrail site, yes, I have. I am familiar with
3 it.

4 Q. Were you involved in any way with this
5 site at the time of the issuance of the Record of
6 Decision prior to that point?

7 A. No. The Record of Decision was -- is
8 dated June 28th, 1991. At that time I was a
9 remedial project manager in the Michigan/Wisconsin
10 branch or section. Actually I think at that time it
11 was a section. And so I didn't have any involvement
12 with the writing of the Record of Decision.

13 MR. JAFFE: Okay. I have no further
14 questions.

15 REDIRECT EXAMINATION

16 BY MR. CUNNINGHAM:

17 Q. I just have a few.

18 Mr. Wilk, do you recall looking
19 at Exhibit No. 2? Do you have that in front of you?

20 A. This?

21 MR. JAFFE: Exhibit No. 2.

22 BY MR. CUNNINGHAM:

23 Q. Calling your attention to 5.2, the
24 last paragraph on the page, do you want to read that

1 for me?

2 A. The last bullet?

3 Q. Yes.

4 A. Okay. Reported tank cars?

5 Q. Correct.

6 A. "Reported buried tank cars and buried
7 or spilled drums on the Conrail require
8 investigation as potential sources to the
9 groundwater contamination."

10 Q. Buried tank cars were reported, as I
11 understand it, to you by Bridget Lombardi; is that
12 right?

13 A. Yes, that's how I testified, yes.

14 Q. That's what I recall. And my question
15 now is of your own personal knowledge -- well,
16 strike that.

17 Is there any other information
18 you have about buried tank cars or spilled drums on
19 the Conrail site other than that report?

20 A. No.

21 Q. Okay. Is there anything in the files
22 of EEPA that you know of that exists pertaining to
23 this report of buried tank cars and buried or
24 spilled drums on the Conrail site?

1 A. I don't know of any.

2 Q. All right. Now, turning to Deposition
3 Exhibit No. 3; do you have that?

4 MR. JAFFE: Paul may have that.

5 BY MR. CUNNINGHAM:

6 Q. Let's turn for a moment, if you will,
7 to 4.15. At the bottom you'll see that.

8 MR. JAFFE: 15?

9 MR. CUNNINGHAM: Yes.

10 BY MR. CUNNINGHAM:

11 Q. Under "Section 4.6.1.1, Overview."
12 Are you familiar with that section in general?

13 A. Yes.

14 Q. Is it your understanding from the
15 paragraphs that are under that section that the EPA
16 is continuing to study the risks of -- with respect
17 to human health?

18 A. Yes.

19 Q. And if I read the second sentence
20 correctly and understand it, a part of the study is
21 to estimate potential future threats to public
22 health; isn't that right?

23 A. Yes.

24 Q. Okay. And it's further my

1 understanding from your testimony yesterday that you
2 are aware of a bottled water program that exists for
3 some of the residents in the railyard vicinity; is
4 that correct?

5 A. I think I clarified my answer to that
6 as I'm aware of a filter -- a filter -- where the
7 I.D.E.M. went around and installed household filters
8 for people so it filtered their water coming from
9 their private drinking water, well.

10 Q. And does that filter system still
11 exist, as far you know?

12 A. There are still filter systems in
13 persons' homes.

14 Q. And there may be, but you're not aware
15 of that program, a program for bottled water?

16 A. I'm not -- I don't recall the bottled
17 water program.

18 Q. But this has been an ongoing attempt
19 by the EPA to alleviate future health hazards; is
20 that your understanding?

21 A. Well, the filters are there to protect
22 the residents from possible harm caused by drinking
23 the contaminated water.

24 MR. CUNNINGHAM: Do you want to repeat the

1 answer that he gave?

2 (Answer read)

3 MR. CUNNINGHAM: That's all the questions I
4 have.

5 MR. LAMBERT: I just have a couple more.

6 RECROSS EXAMINATION

7 BY MR. LAMBERT:

8 Q. You were asked whether you had any
9 reason to question -- let me start over again.

10 You were asked by Mr. Freeman
11 whether you had any reason to question certain of
12 the conclusions that were reached or which are
13 contained in the technical memo. Do you recall
14 that?

15 A. Yes.

16 Q. I want to know whether you have had an
17 opportunity to read the reports prepared by the
18 Gemeinhardt contractor with respect to the extent or
19 potential extent of the plume of contamination from
20 the Gemeinhardt facility?

21 A. Have I had an opportunity to?

22 Q. Have you read them?

23 A. I don't recall reading them.

24 MR. LAMBERT: No further question.

1 MR. CUNNINGHAM: Thank you.

2 MR. FREEMAN: I just have one.

3 MR. CUNNINGHAM: I'm sorry.

4 RECROSS EXAMINATION

5 BY MR. FREEMAN:

6 Q. You said earlier that monitoring well
7 results were more reliable than lead screen auger
8 results; is that correct?

9 A. That is correct.

10 Q. Why is that?

11 A. Because groundwater monitoring wells
12 -- why are they more reliable? Because they meet
13 higher data quality. That's a higher level data
14 quality. I mean, I don't know what -- didn't I say
15 before that for enforcement purposes our preference
16 is for ease of a groundwater monitor well sampling
17 analysis? And that's the reason why.

18 MR. FREEMAN: Okay. No further question.

19 MR. JAFFE: Reserve signature.

20 FURTHER DEPONENT SAYETH NOT . . .

21

22

23

24

1 STATE OF ILLINOIS]
] SS:
2 COUNTY OF C O O K]

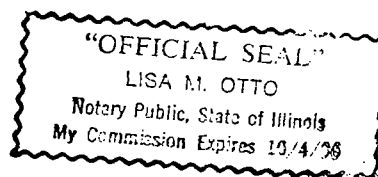
3 I, Lisa M. Otto-Bringle, a notary
4 public in and for the County of Cook and State of
5 Illinois, do hereby certify that Charles Wilk was by
6 me first duly sworn to testify the whole truth, and
7 that the foregoing deposition was recorded
 stenographically by me and was reduced to
 computerized transcript under my direction, and that
 the said deposition constitutes a true record of the
 testimony given by said witness.

8 I further certify that the reading and
9 signing of said deposition was not waived by the
 witness and counsel.

10 I further certify that I am not a
11 relative or employee of attorney or counsel of any
12 of the parties, or a relative or employee of such
 attorney or counsel, or financially interested
 directly or indirectly in this action.

13 IN WITNESS WHEREOF, I have hereunto
14 set my hand and affixed my seal of office at
15 Chicago, Illinois, this 21st day of December, A. D.,
16 1992.

17 Lisa M. Otto-Bringle
18 Certified Shorthand Reporter
 Illinois CSR License No. 084-003301



 ERNESTO R. ESPIRITU & ASSOCIATES (312) 263-1492

TABLE OF CONTENTS

<u>Section</u>		<u>Page</u>
1	INTRODUCTION	1-1
	1.1 GENERAL	1-1
	1.2 BACKGROUND	1-2
2	DATA REQUIREMENTS	2-1
3	WORK PLAN RATIONALE	3-1
	3.1 PHASE III RI OBJECTIVES	3-1
	3.2 PROJECT APPROACH	3-2
4	REMEDIAL INVESTIGATION	4-1
	4.1 TASK 16: PHASE III PROJECT PLANNING	4-3
	4.1.1 Subtask 16.0: Preliminary Phase III Plan	4-3
	4.1.2 Subtask 16.1: Phase III Work Plan	4-3
	4.1.3 Subtask 16.2: Phase III Field Sampling Plan	4-3
	4.1.4 Subtask 16.3: Phase III QAPP	4-3
	4.1.5 Subtask 16.4: Phase III Health and Safety Plan	4-4
	4.2 TASK 2: COMMUNITY RELATIONS SUPPORT	4-4
	4.2.1 Subtask 2.5: Community Relations Plan Revisions	4-4
	4.2.2 Subtask 2.6: Fact Sheets/Update Report III	4-4
	4.2.3 Subtask 2.7: Public Comment Period Activities III	4-5
	4.2.4 Subtask 2.8: Additional Community Relations Implementation III	4-6
	4.3 TASK 3: FIELD INVESTIGATION	4-7
	4.3.1 Subtask 3.6: Phase III Investigation Support/Subcontract Procurement	4-7
	4.3.2 Subtask 3.7: Phase III Field Investigation	4-7
	4.3.2.1 Mobilization/Demobilization	4-7
	4.3.2.2 Lead-Screen Auger Sampling	4-7
	4.3.2.3 Ecological Sampling	4-9
	4.3.2.4 Drainage Network Sampling	4-10

DEPOSITION
EXHIBIT
WICK
EXHIBIT 3
DATE 12/9/92
REP REP
#B

Table of Contents (Cont.)

<u>Section</u>		<u>Page</u>
	4.3.2.5 Groundwater Monitoring and Sampling	4-11
	4.3.2.6 Soil Sampling	4-12
	Tests	4-13
	4.3.2.7 Site Surveying	4-14
	4.3.2.8 Disposal of RI-Derived Wastes	4-14
4.4	SUBTASK 4.1: SAMPLE ANALYSIS AND DATA VALIDATION III	4-14
4.5	SUBTASK 5.1: DATA EVALUATION III	4-14
4.6	TASK 6: BASELINE RISK ASSESSMENT	4-15
	4.6.1 Subtask 6.0: Human Health Evaluation	4-15
	4.6.1.1 Overview	4-15
	4.6.1.2 Identification of Chemicals of Potential Concern	4-16
	4.6.1.3 Exposure Assessment	4-17
	4.6.1.3.1 Characterization of the Exposure Setting	4-18
	4.6.1.3.2 Identification of Exposure Pathways	4-18
	4.6.1.3.3 Quantification of Exposure	4-18
	4.6.1.4 Toxicity Assessment	4-20
	4.6.1.5 Risk Characterization	4-21
	4.6.2 Subtask 6.1: Ecological Assessment	4-22
4.7	TASK 7: RI REPORT	4-23
	4.7.1 Subtask 7.4: Groundwater Modeling	4-23
	4.7.2 Subtask 7.5: RI Report Preparation	4-23
5	FEASIBILITY STUDY	5-1
5.1	TASK 8: REMEDIAL ALTERNATIVES SCREENING	5-1
	5.1.1 Subtask 8.2: Preliminary Remedial Technologies	5-1
	5.1.2 Subtask 8.3: Development of Alternatives	5-1
	5.1.3 Subtask 8.4: Initial Screening of Alternatives	5-3
	5.1.4 Subtask 8.5: Alternatives Array Document	5-4
	5.1.5 Subtask 8.6: Data Requirements	5-4
5.2	TASK 9: REMEDIAL ALTERNATIVES EVALUATION	5-4
5.3	TASK 10.1: FEASIBILITY STUDY REPORT	5-6

Table of Contents (Cont.)

<u>Section</u>		<u>Page</u>
6	PROJECT ADMINISTRATION	6-1
6.1	SUBTASK 12.1: PROJECT MANAGEMENT III	6-1
6.2	TASKS 13 AND 15: POST-RI/FS TASKS	6-1
6.2.1	Task 13: ROD Support	6-1
6.2.2	Task 15: Negotiation Support	6-2
7	PROJECT ORGANIZATION	7-1
8	PROJECT SCHEDULE	8-1
9	PROJECT COST	9-1
10	REFERENCES	10-1
<u>Plate</u>	(Following Section 10)	
1	PHASE III PROPOSED SAMPLE LOCATIONS MAP	

LIST OF ILLUSTRATIONS

<u>Figure</u>		<u>Page</u>
1-1	Site Location Map	1-3
7-1	Project Organization for Conrail RI/FS	7-3
8-1	Phase III RI Schedule for Conrail Site	8-3

LIST OF TABLES

<u>Table</u>		<u>Page</u>
4-1	Summary of Sampling and Analysis Program	4-24
4-2	Summary of Some Potentially Complete Pathways at the Conrail Study Area	4-27

1. INTRODUCTION

1.1 GENERAL

This work plan was prepared pursuant to Revision No. 4 of the Statement of Work (SOW) to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the Robert Young Conrail Rail Yard located in Elkhart, Indiana. Work assignment (WA) 01-5L7Y was issued by the U.S. Environmental Protection Agency (EPA) to Ecology and Environment, Inc. (E & E), under the Region V Alternative Remedial Contracting Strategy (ARCS) contract number 68-W8-0086.

The purpose of the RI is to determine the nature and extent of contamination at the Conrail rail yard and vicinity. The purpose of the FS is to develop and evaluate appropriate remedial action alternatives based on the RI data and report. This work plan describes the scope of activities that will be performed for the Phase III RI.

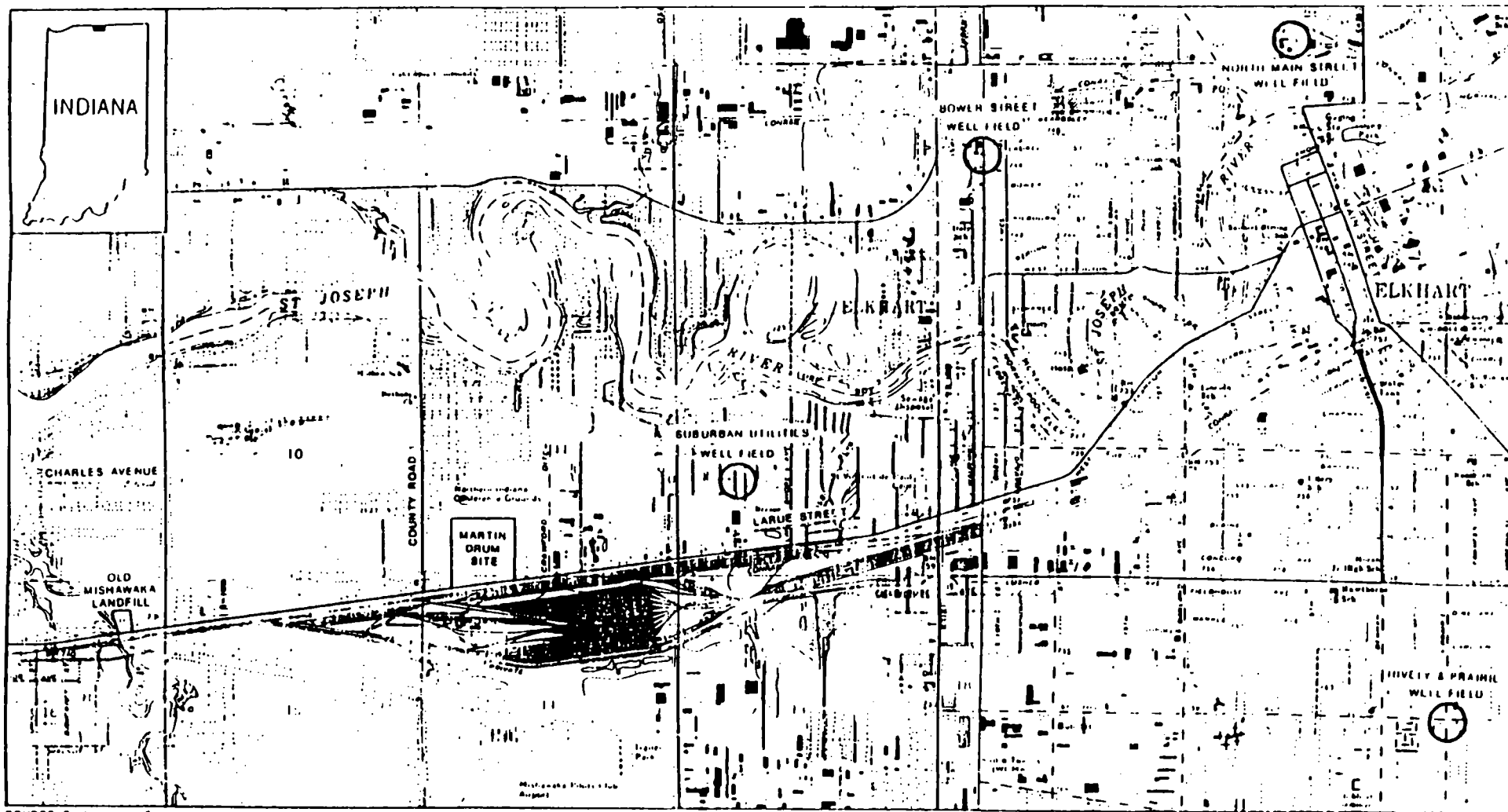
This work plan is divided into ten sections and provides a description of the current task and subtask structure developed for Phase III. In order to conduct the Phase III RI and FS, revisions have been made to existing tasks and new tasks have been added.

Section 2 of this work plan provides a summary of the data requirements for the Phase III RI and FS. Section 3 presents the Phase III work plan rationale, objectives, and approach. Sections 4 and 5 describe the tasks and subtasks to be performed as part of the Phase III RI and FS. Section 6 provides project administration tasks, and Sections 7, 8, and 9 provide the project organization, schedule, and cost, respectively. Section 10 provides a list of references cited in this work plan.

1.2 BACKGROUND

Figure 1-1, the study area location map, shows the Conrail rail yard and surrounding areas. A summary of the site history can be found in the *Work Plan for the Phase II Remedial Investigation and Phased Feasibility Study at the Conrail Site, Elkhart, Indiana* (E & E 1991a). Beginning in August 1989, E & E conducted a Phase I RI at the Conrail site. Following an evaluation of the data collected during the Phase I RI, E & E recommended, with EPA's concurrence, that a second phase of investigation be conducted to address project directives. E & E completed a Phased Feasibility Study (PFS) in April 1991 (E & E 1991b). A Record of Decision (ROD) for interim groundwater remedial action at the Conrail site was signed in June 1991, selecting a remedy which followed the findings presented in the PFS; the remedy includes the extension of the Elkhart municipal water supply system to all affected areas, groundwater monitoring, institutional controls, and groundwater extraction treatment, and disposal as a means of plume gradient control. Beginning in July 1991, E & E conducted the Phase II RI at the Conrail site. In July 1992, E & E submitted the *Conrail RI/FS, Phase II Technical Memorandum* to EPA (E & E 1992). The *Phase II Technical Memorandum* summarized, integrated, and presented interpretations and conclusions of data gathered during Phase I and Phase II field investigations. E & E recommended, with EPA's concurrence, that a third phase of investigation be conducted to address the remaining data requirements. The data requirements for the Phase III RI are presented in Section 2 of this work plan.

A summary of the site geology and hydrogeology as well as Phase II analytical soil and groundwater results can be found in the *Phase II Technical Memorandum*.



SOURCE: Ecology and Environment, Inc., 1992; BASE MAPS: USGS, Elkhart, IN Quadrangle, 7.5 Minute Series, 1961, Photorevised 1985 USGS, Decatur, IN Quadrangle, 7.5 Minute Series, 1969, Photorevised 1980.

FIGURE 1-1 STUDY AREA LOCATION MAP

2. DATA REQUIREMENTS

Based upon the evaluation of results from the Phase I and Phase II field investigations, E & E recommended with EPA's concurrence, that a third phase of investigation is needed to meet the objectives of the RI and to provide adequate data for completion of a site-specific risk assessment and FS. The following data needs have been identified in the Statement of Work (SOW) for the Phase III RI:

- Further definition of source areas in track 69 and between tracks 65 and 66.
- Investigation for the potential presence of dense non-aqueous phase liquid (DNAPL) in track 69.
- Further definition of the path of the groundwater plumes originating from the track 69 and tracks 65 and 66 sources.
- Investigation of the storm water drainage network and reported locations of buried tank cars and spilled drums located on the Conrail facility as potential sources of groundwater contamination.
- Further investigation of the link between County Road 1 groundwater contamination and Charles Avenue groundwater contamination.
- Identification of the potential impact of groundwater contamination to the St. Joseph River, Baugo Bay, and ponds on the Conrail facility; and
- Identification of the nature and extent of the potential source on the rail yard of the LaRue Street groundwater contamination plume.

3. WORK PLAN RATIONALE

3.1 PHASE III RI OBJECTIVES

Based on E & E's understanding of the current conditions at the Conrail site and the data requirements identified in Section 2, the primary objectives for the Phase III RI are listed below.

- Define the north-south extent of the track 69 carbon tetrachloride (CCl_4) area source and investigate the potential for the presence of additional sources including DNAPL;
- Define the path of the groundwater contamination plume originating from the CCl_4 source at track 69;
- Define the areal extent of the trichloroethene (TCE) source located between tracks 65 and 66 in the west end of the classification yard;
- Define the path of the groundwater contamination plume originating from the TCE source between tracks 65 and 66;
- Investigate the storm water drainage network located on the Conrail facility as a potential source of groundwater contamination;
- Investigate reported locations of buried tank cars, drums, and spilled drums as potential sources of groundwater contamination in the Conrail study area;
- Further investigate the link between the County Road 1 groundwater contamination and the Charles Avenue groundwater contamination;
- Identify the potential impact of groundwater contamination to the St. Joseph River, Baugo Bay, and ponds on the Conrail facility; and
- Identify the nature and extent of the potential source on the rail yard of the LaRue Street groundwater contamination plume.

3.2 PROJECT APPROACH

In view of the wide distribution of the groundwater contaminant plumes and the information currently available concerning source areas, E & E will continue the phased approach for data collection and analysis for the Conrail project. The data collection efforts proposed in this work plan are aimed at fulfilling the Phase III RI objectives and supporting the FS, which will be conducted concurrently. The Phase III field investigation will include the following:

- Groundwater sampling using lead-screen auger (LSA) drilling methodology to provide a vertical profile of groundwater quality;
- Surface water and sediment sampling in area ecosystems;
- Sediment and water sampling from the on-site storm water drainage network;
- Soil sampling to locate potential source areas, to further define identified sources, and to locate potential DNAPL;
- Installation of additional shallow, intermediate, and bedrock monitoring wells; and
- Groundwater sampling from monitoring wells.

During the Phase III investigation, approximately 200 groundwater samples will be collected using the LSA sampling technique. In order to trace the contaminant plume(s) back to potential source areas, to define the paths of groundwater plumes originating from identified sources, and to determine the appropriate intervals for screen placement in permanent monitoring wells, a gas chromatograph (GC) will be used to field-analyze groundwater samples for TCE, CCl_4 , chloroform (CHL), and 1,1,1-trichloroethane (TCA). The effectiveness of LSA sampling and field analysis using a GC to achieve these objectives was demonstrated during the Phase II field investigation and documented in the *Phase II Technical Memorandum* (E & E 1992).

Groundwater samples will be collected at defined intervals, beginning at the water table and progressing down to the top of bedrock or to the maximum achievable depth. Boreholes will be initiated in areas of known contamination, based on Phase I and Phase II investigation results. Based on field screening results and the known local groundwater flow

direction, the investigation may proceed by backtracking the contaminated groundwater to the source(s) of contamination or by tracking groundwater contamination downgradient from identified source(s). Use of the LSA technique will also provide data on the vertical extent of contamination and the concentration gradients within the plumes.

Surface water and sediment samples will be collected from aquatic ecosystems in the study area. The samples will be analyzed for Target Compound List (TCL) volatile organics, extractable organics, pesticides and polychlorinated biphenyls (PCBs), and Target Analyte List (TAL) inorganics using the Contract Laboratory Program (CLP) in order to assess the potential impact of the County Road 1 groundwater plume on surface water and ecosystems in the area. These results will be incorporated into the ecological assessment (EA) and Human Health Evaluation (HHE).

To investigate the possibility that the storm water drainage network located on the Conrail facility is, or was in the past, redistributing contamination and acting as a source of contamination, water and sediment samples will be collected from the manways and/or storm drains. These samples will be analyzed for TCL volatile organics by a CLP laboratory.

Further definition of the dimensions of identified source areas, and a definition of the nature and extent of potential source(s), and identification of potential DNAPL will be gained through subsurface soil sampling. Soil samples will be collected and analyzed for TCL volatile organics through a CLP laboratory.

Groundwater monitoring wells will be installed at various depths and locations, based on Phase I and Phase II investigation results and Phase III field screening results. Groundwater samples will be collected from the monitoring wells installed during the Phase I and Phase II investigations and new monitoring wells that will be installed during the Phase III investigation. One round of samples will be collected and analyzed for TCL volatile organics.

At the conclusion of the Phase III investigation, the new data will be evaluated in conjunction with the Phase I and Phase II data, and a baseline risk assessment, composed of a HHE and an EA, will be completed.

The approach for conducting the FS will be consistent with the National Contingency Plan (NCP) and the work assignment SOW. In the FS, E & E will develop and evaluate a number of remedial alternatives that provide for gradient control and treatment of groundwater contaminant plumes and that address identified contaminant sources and contaminated

media determined to pose an unacceptable risk to human health and the environment. The risk assessment will provide the basis and rationale for completing the FS and implementing the selected remedial action(s). Next, remedial alternatives will be developed and screened based on the response objectives established and the available remedial technologies. Alternatives will be screened, based on their effectiveness, implementability, and cost. E & E will conduct a detailed analysis of alternatives that pass the initial screening, consisting of an individual analysis of each alternative against a set of nine criteria and a comparative analysis of all options, comparing them to each other on the basis of the same criteria. Following the analysis, an FS report will be prepared that details the evaluation process and recommends appropriate remedial action alternative(s).

4. REMEDIAL INVESTIGATION

The tasks required to complete the Phase III RI at the Conrail site are presented in this section. The Phase III RI will involve the implementation of new tasks, as well as additional activity under existing tasks. Because the task structure for the project has been significantly modified, resulting in RI tasks appearing numerically subsequent to the FS tasks, the modified task structure for the entire project is presented below. The remainder of Section 4 will describe only the new Phase III tasks/subtasks and the existing Phase I and Phase II tasks that have not yet been completed. Completed Phase I and Phase II tasks for which no further work will be conducted are also included on the list below. Closed tasks with no further activity during the Phase III RI/FS are denoted by "**".

- Task 1: Project Planning
 - 1.1: Initial Site Evaluation*
 - 1.2: Work Plan Memorandum*
 - 1.3: Work Plan*
 - 1.4: HSP-QAPP-FSP*
 - 1.5: Project Management*
 - 1.6: Phase II Project Plan Revisions*
- Task 2: Community Relations Support
 - 2.1: Community Relations Plan*
 - 2.2: Fact Sheets/Update Report*
 - 2.3: Public Comment Period Activities*
 - 2.4: Additional Community Relations Implementation*
 - 2.5: Community Relations Plan Revisions
 - 2.6: Fact Sheets/Update Report III
 - 2.7: Public Comment Period Activities III
 - 2.8: Additional Community Relations Implementation III
- Task 3: Field Investigation
 - 3.1: Bid Specification Activities and Subcontractor Procurement*
 - 3.2: Literature Search*
 - 3.3: Phase I Field Investigation*
 - 3.4: Cone Penetrometer Testing Demonstration*

- 3.5: Phase II Field Investigation*
- 3.6: Phase III Investigation Support/Subcontract Procurement
- 3.7: Phase III Field Investigation
- Task 4: Sample Analysis and Data Validation*
- 4.1: Sample Analysis and Data Validation III
- Task 5: Data Evaluation*
- 5.1: Data Evaluation III
- Task 6: Baseline Risk Assessment
- 6.0: Human Health Evaluation
- 6.1: Ecological Assessment
- Task 7: RI Report
- 7.1: Computer Modeling*
- 7.2: RI Report*
- 7.3: Phase II RI Technical Memorandum*
- 7.4: Groundwater Modeling
- 7.5: RI Report Preparation
- Task 8: Remedial Alternatives Screening
- 8.1: Preliminary Remedial Technologies*
- 8.2: Preliminary Remedial Technologies III
- 8.3: Development of Alternatives
- 8.4: Initial Screening of Alternatives
- 8.5: Alternatives Array Document
- 8.6: Data Requirements
- Task 9: Remedial Alternatives Evaluation
- Task 10: FS Report*
- 10.1: FS Report III
- Task 11: Phased Feasibility Study for Interim Action
- 11.1: Evaluation of Existing Data*
- 11.2: Preliminary Risk Assessment for Interim Action*
- 11.3: Development and Screening of Alternatives*
- 11.4: Treatability Studies*
- 11.5: Remedial Alternatives Evaluation*
- 11.6: Phased Feasibility Study Report*
- Task 12: Project Management*
- 12.1: Project Management III
- Task 13: ROD Support
- Task 14: Design Report*
- Task 15: Negotiation Support
- Task 16: Phase III Project Planning
- 16.0: Preliminary Phase III Plan
- 16.1: Phase III Work Plan
- 16.2: Phase III Field Sampling Plan
- 16.3: Phase III QAPP
- 16.4: Phase III Health and Safety Plan
- Task 90: Publications
- 90.1: RI Report Publications
- 90.2: FS Report Publications

- 90.3: CRP Revision Publications
- 90.4: Fact Sheet/Update Report III Publications
- 90.5: Public Comment Period III Publications
- 90.6: Additional CR Implementation III Publications

The following sections describe the scope of work for activity under existing tasks and for the implementation of new tasks. The task descriptions are presented in the expected order of occurrence rather than in numerical sequence.

4.1 TASK 16: PHASE III PROJECT PLANNING

4.1.1 Subtask 16.0: Preliminary Phase III Plan

This subtask includes efforts to preliminarily scope Phase III RI activities to address data gaps outlined in the *Phase II Technical Memorandum* (E & E July 1992), and to prepare a schedule and budget for all remaining activities through completion of the RI/FS, assuming a fourth quarter, fiscal year 1993, ROD date. Presentation of the results of these preliminary planning activities was made at a kick-off meeting held September 14, 1992.

4.1.2 Subtask 16.1: Phase III Work Plan

This subtask includes the preparation of this Phase III Work Plan plus the activities necessary to support the development of the plan. Included in this work plan are the Phase III RI/FS tasks, the proposed investigation plan, the proposed project schedule, the project management and organization structure, and the detailed cost estimate for the work to be performed. The objectives and approach for the Phase III RI are also presented.

4.1.3 Subtask 16.2: Phase III Field Sampling Plan

This subtask includes the preparation of the Phase III field sampling plan (FSP). This includes delineation of methods and procedures to be used to investigate and sample surface water, sediment, soil, and groundwater. The FSP will be part of the sampling and analysis plan (SAP).

4.1.4 Subtask 16.3: Phase III QAPP

This subtask includes the preparation of the Phase III QAPP, which includes descriptions of activities designed to ensure that the data quality objectives for the Phase III RI are met. The QAPP and FSP comprise the SAP.

4.1.5 Subtask 16.4: Phase III Health and Safety Plan

The revised site safety plan will contain an update of Phase III activities, a description of site entry and monitoring requirements, updated personnel assignments, physical and chemical risks, and personnel protective equipment to be used during Phase III field investigation.

4.2 TASK 2: COMMUNITY RELATIONS SUPPORT

E & E will assist EPA in implementing the community relations program during the Phase III RI and FS for the Conrail site. The scope of work for community relations support is broken down into the subtasks described below. Each subtask is a new subtask under which work will be performed during the Phase III RI and FS. EPA may modify this scope of work if it is later determined that additional community relations activities are required to meet the community's needs for information concerning the study area.

4.2.1 Subtask 2.5: Community Relations Plan Revisions

E & E will prepare a revised Community Relations Plan (CRP) to replace the existing CRP dated May 1989. E & E assumes that revising the CRP will include conducting telephone interviews, researching facts associated with the community's character, and incorporating changes that have occurred during the RI/FS, i.e., implementation of a Phase III RI. The revised CRP will be placed in the information repositories for public review. The scope and schedule of the community relations activities will be determined in conjunction with the Phase III RI.

4.2.2 Subtask 2.6: Fact Sheets/Update Report III

E & E will write, design, and produce two additional fact sheets (each approximately eight pages in length) at the following RI/FS milestones: start of the Phase III fieldwork

and RI/FS completion. To date, E & E has completed three fact sheets including the RI/FS kick-off fact sheet, Phase I Feasibility Study fact sheet, and the Phase I RI progress report fact sheet.

E & E will also write, design, and produce one 1-page site update fact sheet. This site update fact sheet will be produced at the request of the RPM.

E & E will provide draft fact sheets to EPA for review approximately three weeks prior to scheduled public meeting dates, provided that adequate notice is given. The final printed fact sheets will be mailed to the public at least seven days prior to the public meetings. The remaining fact sheets will be provided to EPA approximately three days prior to the public meetings.

Key assumptions made in developing the cost estimate for this subtask include the following:

- Two additional fact sheets, each eight pages in length, will be developed.
- One site update fact sheet, one page in length, will be developed.
- Each fact sheet will require approximately 63 total LOE hours to produce.
- The site update fact sheet will require approximately 10 total LOE hours to produce.
- Approximately 500 copies of each fact sheet will be copied in-house on recycled paper ("glacier-mist").
- Approximately 450 copies of each fact sheet will be delivered to EPA, with mailing labels, three days prior to the planned mailing date.

4.2.3 Subtask 2.7: Public Comment Period Activities III

E & E will assist EPA with community relations activities associated with the remaining public meetings/hearings. To date, E & E has supported EPA at the kick-off public meeting and at the Phase I RI availability session. The remaining public meetings will occur at the following RI/FS milestones: start of Phase III field work and RI/FS completion.

The latter meeting will be a public hearing on the proposed plan and will include a court reporter to provide a verbatim transcript.

E & E will be responsible for the following activities:

- Preparing and placing four newspaper advertisements in local newspapers at the completion of the RI/FS. The advertisements will describe the document(s) available for public comment, summarize the remedial alternatives and EPA's preferred alternative, announce the public meeting date and location, state the dates of the comment period, and list the EPA contact who will receive written comments. E & E assumes that EPA will provide the text for all advertisements.

E & E has budgeted \$350 for each advertisement to appear in the *Elkhart Truth* newspaper. This is based on a 30-column inch advertisement.

- Reserving public hearing and meeting locations at local facilities and preparing any visual aids requested by EPA for use at the hearings/meetings.
- Arranging for a court reporter/stenographer to attend the public hearing at the RI/FS completion to provide a verbatim transcript of the hearing. E & E will also ensure that copies of the transcripts are placed in the information repositories. E & E has budgeted \$500 for court reporting services.
- At the request of EPA, assisting in preparing a Responsiveness Summary after the close of the public comment period. The Responsiveness Summary will summarize written and oral comments made by members of the public during the comment period and EPA's response to the comments.

4.2.4 Subtask 2.8: Additional Community Relations Implementation III

This subtask provides for additional community relations activities that will be conducted in conjunction with the above-mentioned subtasks. The scope of work for this subtask may be modified by EPA if the community relations program is expanded to include activities, such as availability sessions, that are not currently anticipated by EPA. At present, however, the following activities are included in this subtask:

- Updating the information repositories to ensure that copies of relevant RI/FS documents are available to the public;

- Maintaining and updating a mailing list to include all members of the community who are to receive copies of fact sheets and project update reports; and
- Assisting EPA in developing and distributing evaluations that will assess the effectiveness of the community relations activities.

4.3 TASK 3: FIELD INVESTIGATION

4.3.1 Subtask 3.6: Phase III Investigation Support/Subcontract Procurement

This subtask will include procurement of Bergerson-Caswell, Inc., for drilling and sampling of LSA and soil borings, and installing and developing monitoring wells. In accordance with ARCS contractual guidelines, the above-named subcontractor was subcontracted for Phase II drilling and will be retained for Phase III RI drilling activities.

This subtask will also include solicitation and procurement of a subcontractor to store, characterize, transport, and dispose of Phase III investigation-derived waste. Contractor selection will also be in accordance with ARCS contractual guidelines, and will be subject to consent of the EPA contracting officer.

The investigation support activities included in this subtask involve E & E's preparation for the field investigation. These activities include procurement of field laboratory and field office trailers, the associated utility hook-up, and permission for the use of space in the county park.

4.3.2 Subtask 3.7: Phase III Field Investigation

The following activities will be performed to obtain the data to meet the objectives for the Phase III RI.

4.3.2.1 Mobilization/Demobilization

Mobilization includes preparations for all field investigation tasks, including obtaining utility clearance, setting up field offices, preparing the field laboratory for GC analysis, obtaining field equipment, and making arrangements for sample collection and shipment. Also included in this task are demobilization and cleanup activities.

4.3.2.2 Lead-Screen Auger Sampling

An LSA drilling/groundwater sampling technique will be implemented in the study area. The use of this technique will allow sampling of groundwater within the plume(s) at discrete depth intervals to determine the vertical extent of contamination, and will provide information on the optimum depth for monitoring well screen intervals. The technique will also provide information bearing on the location and extent of potential source areas.

With this methodology, a hollow-stemmed auger, with a 5-foot lead-screened section, will be advanced by conventional drilling methods at 5, 10, or 20-foot intervals determined by GC screening results and the pattern of contamination for specific areas identified during the Phase II field investigation. A stainless steel or Teflon™ plug inserted into the end of the auger will be used to prevent heaving sands from entering the auger. At these sampling interval depths, the LSA will be sealed from the flights above it with a downhole packer system installed inside the hollow-stem auger. The packer system is constructed of a sliding head inflatable packer that expands radially as it is inflated. The expandable packer gland will be mounted on a 2-inch inside diameter (ID) mandrel pipe. This packer assembly will be attached to the end of a 2-inch ID stainless steel riser pipe and positioned downhole just above the LSA. When in position, the packer will be inflated with nitrogen, creating an effective seal over the entire length of the packer gland element. This seal will isolate the water column within the LSA below the packer and thus will minimize the volume of purge water generated prior to sampling. A minimum of three standing volumes of water will be purged from the LSA and riser with a 1.75-inch outside diameter (OD) Keck™ helical rotor-type submersible pump positioned inside the LSA. Between each volume, the purge water will be tested for pH, conductivity, and temperature until these parameters are stable. Following purging, the groundwater sample will be collected directly from the submersible pump's discharge hose into two 40-mL glass volatile organic analysis (VOA) vials with zero headspace. Each vial will be labeled with boring number, depth of sample, and date/time of collection. Samples will be cooled immediately on ice and transported to the field laboratory for GC analysis for TCE, TCA, CCl₄, and CHL, using the purge and trap method. After each sample is collected, the pump, packer, and riser will be removed from the augers and decontaminated with a steam cleaner.

This sampling technique will be initiated in the classification yard on the Conrail facility in known CCl_4 and TCE source areas based on Phase II field investigation results. The CCl_4 source area is located in the east end of the classification yard near track 69 and the TCE source area is located on the west end of the yard between tracks 65 and 66 (see Plate 1). LSA sampling techniques will be used to further define the path of groundwater contamination plumes originating from these two sources. It is estimated that four and three LSA borings in the CCl_4 and TCE source areas, respectively, will be necessary to fulfill this objective. The final depth and location of LSA borings will be dictated by the field GC results.

The LSA sampling technique will also be used to further investigate the link between the County Road 1 contamination and the Charles Avenue contamination. Two LSA borings drilled to the maximum achievable depth are planned to fulfill this objective. However, the final depth and location of LSA borings will be dictated by the field GC results.

The LSA sampling technique will also be used in the east end of the Conrail site study area, on the Conrail facility, to identify the source of the LaRue Street contamination plume within the rail yard. It is estimated that five LSA borings in this area will be necessary to fulfill this objective. Borings will be drilled progressively upgradient, based on the known groundwater flow direction. Successive screening results from each location will be compared to previous results until significantly lower concentrations of contamination are detected on the facility.

A total of 14 LSA borings are proposed in the study area during the Phase III field investigation. Drilling and sampling will continue down through the aquifer to a depth of approximately 150 feet below ground surface (BGS) or until a minimum of two consecutive samples and a minimum 20 feet of the aquifer show non-detects for TCE, TCA, CHL, and CCl_4 based on field screening results. Assuming LSA borings extend to a depth of 150 feet, approximately 200 groundwater samples will be collected and field-screened for TCE, TCA, CHL, and CCl_4 . A detailed procedure for conducting groundwater sampling through the use of LSA sampling technique is presented in the Phase III FSP. A summary of the number of LSA sample analyses to be performed in the field laboratory, and quality assurance/quality control (QA/QC) samples to be collected is presented in Table 4-1.

4.3.2.3 Ecological Sampling

The purpose of the ecological sampling is to collect sufficient data to evaluate the nature and extent of contamination in nearby aquatic and wetland habitats.

A total of 24 sediment samples and 24 surface water samples will be collected from the targeted ecosystems during the Phase III field investigation. The proposed sample locations include the St. Joseph River, Baugo Bay, Baugo Creek, and ponds on the Conrail facility. The sample locations are presented on Plate 1. Six surface water and six sediment samples will be collected from the St. Joseph River where the groundwater contamination plume and the St. Joseph River intersect. Six additional surface water and six additional sediment samples will be collected from the St. Joseph River upstream of the intersection of Crawford's Ditch and the St. Joseph River; these are designated as background samples. The ecological impact of contaminant loading via groundwater discharge to the St. Joseph River will be evaluated through the use of these sample results. These sample results will also be used in the HHE to determine potential risks of a surface water exposure route.

Six surface water and six sediment samples will be collected from Baugo Bay where the bay and the groundwater contamination plume intersect. Additionally, three surface water and three sediment samples will be collected from Baugo Creek background samples. The ecological impact of contaminant loading via groundwater discharge to Baugo Bay will be evaluated through the use of these sample results.

One surface water and one sediment sample will be collected from each of the three ponds located on the southern boundary of the Conrail property. The preliminary ecological impact of contaminant loading via groundwater discharge or facility underground drainage discharge to the ponds will be evaluated through the use of these sample results.

All surface water and sediment samples will be analyzed for TCL volatile organics, extractable organics, pesticides and PCBs, and TAL inorganics. All analyses will be performed by a CLP Laboratory. A summary of the proposed sampling and analysis program is presented in Table 4-1. The procedures for surface water and sediment sample collection and standard decontamination of sampling equipment are detailed in the Phase III FSP.

4.3.2.4 Drainage Network Sampling

Six sediment and six water samples are scheduled for collection from the storm water drainage network on the Conrail facility via manholes to investigate the potential effect of the drainage network on contamination identified in the study area. To date, site reconnaissance activities have identified three surface grates, presumably manways to the storm water drainage network located just west of the classification yard (see Plate 1). The actual number and location of sediment and water samples that will be collected depends upon the acquisition of additional drainage network maps and site reconnaissance. The samples will be submitted for analysis for TCL volatile organics at a CLP laboratory. A summary of the proposed sampling and analysis program is presented in Table 4-1. The procedures for sample collection and standard decontamination of sampling equipment are detailed in the Phase III FSP.

4.3.2.5 Groundwater Monitoring and Sampling

Based on E & E's understanding of present conditions at the Conrail site presented in the *Phase II Technical Memorandum* (E & E July 1992), the results of the LSA sampling, and the preliminary location of source areas, additional shallow, intermediate, and bedrock monitoring well nests will be installed in the study area (see Plate 1). A total of 11 monitoring wells is proposed for installation during the Phase III field investigation. The final quantity, depth, and location of the monitoring wells will be dictated by field GC results of groundwater samples collected from LSA borings. Shallow well depths may range between 15 and 30 feet BGS, intermediate well depths between 50 and 75 feet BGS, and bedrock wells will be installed on top of the bedrock surface.

Five monitoring wells, two shallow, two intermediate, and one on top of bedrock, are proposed to further define the groundwater contamination plume path originating from the track 69 source. One shallow well and one intermediate well are proposed to further define the groundwater contamination plume path originating from the source between tracks 65 and 66. Two bedrock wells are proposed in order to further investigate the link between the County Road 1 groundwater contamination plume and the Charles Avenue groundwater contamination. One shallow well and one intermediate well are proposed to define the LaRue Street contamination plume within the rail yard.

Monitoring well borings will be drilled using either hollow-stem auger or mud rotary drilling techniques. Soil samples for the purpose of subsurface stratigraphic description will be collected from monitoring well borings using a 24-inch-long, 2-inch ID split-spoon sampler at 2½- or 5-foot sample intervals, starting at ground surface. A geologic boring log will be recorded for each boring. Selected soil samples will also have grain-size and permeability analyses performed at a CLP laboratory.

Monitoring wells will consist of 2-inch ID, stainless steel riser pipes and screens. The well screen will be 10 feet in length and will contain 0.01-inch slots of continuous wire-wound design. A filter pack consisting of 100% silica sand will be placed in the annular space surrounding the well screen and will extend approximately 2 feet above the top of the screen. A bentonite grout will be tremied to within 2 feet of the ground surface. Sufficient time will be allowed to permit an adequate seal to form. A 5-foot protective steel casing with a locking cap will be placed over the well and cemented in place to provide well security. Drill cuttings will be handled in accordance with Section 4.3.2.9 of this document. Decontamination procedures are as described in the Phase III FSP.

Because of the size of the study area, the extent of the plumes as presently understood, and the objectives of this investigation, E & E anticipates that 11 additional monitoring wells will be installed during the Phase III investigation. One round of groundwater samples will be collected from the 67 existing and the 11 newly completed monitoring wells (a total of 78 wells) and analyzed for TCL volatile organics to provide the groundwater quality data necessary for conducting the Risk Assessment and Feasibility Study. A summary of the number of samples and the parameters to be analyzed for is presented in Table 4-1. The procedures for collecting groundwater samples and the standard methods for decontaminating sampling tools are described in the Phase III FSP.

4.3.2.6 Soil Sampling

Soil samples will be collected and analyzed to provide data for volume estimation of identified sources, potential source identification, and residual DNAPL identification. Additional geologic information will also be acquired to better define site stratigraphy and potential migration pathways for site contaminants.

A total of 13 soil borings will be completed during the Phase III field investigation (see Plate 1). Three of these borings are proposed for the track 69 CCl_4 source area to further define the areal and vertical extent of the source. Two of the three borings will be advanced to approximately 5 feet below the water table (i.e., 25 feet). The third boring will be advanced to the top of bedrock in order to define the vertical extent of the CCl_4 source and to investigate the potential for residual and pooled DNAPL. Two borings are proposed in the source area between tracks 65 and 66 and will be advanced to approximately 5 feet below the water table (i.e., 25 feet) in order to further define the areal extent of the source. Three soil borings are proposed on the Conrail facility to identify the source of the LaRue Street groundwater contamination plume. Two and three soil borings are proposed to investigate the reported buried tank cars and spilled drums, respectively, on the Conrail facility as potential sources of groundwater contamination. It is anticipated that three soil samples from each shallow boring and 10 soil samples from the single deep boring will be selected for TCL volatile organic analysis. Typically, two samples from the unsaturated zone and one from below the water table will be sent to a CLP laboratory. HNu or Organic Vapor Analyzer (OVA) screening results, and visual observations and LSA groundwater screening results will be the primary criteria for sample selection.

A summary of the proposed soil sampling and analysis program is presented in Table 4-1. The procedures for sample collection and standard decontamination of sampling tools are detailed in the Phase III FSP.

4.3.2.7 Site Surveying

Following the installation of the monitoring wells, the point from which water level measurements are to be taken (a point on top of the inner casing) will be surveyed to United States Geological Survey (USGS) Geodetic Datum to a vertical accuracy of 0.01 foot. The horizontal location of each well will also be surveyed to an accuracy of ± 10 feet. The horizontal location will be surveyed with respect to a minimum of two fixed features on site.

4.3.2.8 Disposal of RI-Derived Wastes

The sampling and drilling activities are expected to generate solid and liquid "waste." The activities, the anticipated type of waste, and the planned handling of the waste are summarized below.

- LSA sampling: Liquids—Development and purge water will be collected and stored in a 500-gallon polyethylene tank. Liquids will then be bulk containerized, analyzed, and discharged to the Elkhart Wastewater Treatment Plan (WTP). Solids—In source areas and residential areas, auger cuttings will be collected and retained in 55-gallon drums and later bulked in a roll-off box pending regulated disposal. In nonsource, nonresidential areas, soil cuttings will be screened for volatile organics with an HNu or OVA. If no readings above background are detected, soil cuttings will be spread around at the boring location.
- Monitoring well drilling and sampling: Liquid—Development and purge water will be handled in the same manner as described for LSA sampling. Drilling fluids will be containerized in 55-gallon drums, and the solids will be allowed to settle out. The resulting liquid will be bulk containerized and discharged to the WTP as described above. Solids—Drill cuttings will be handled in a manner similar to that described for the LSA cuttings.
- Soil borings: Solids—Soil cuttings from source areas will be collected and temporarily stored in 55-gallon drums and later bulked in a roll-off box pending disposal.

4.4 SUBTASK 4.1: SAMPLE ANALYSIS AND DATA VALIDATION III

This is a new subtask under which activity will be performed for the Phase III RI. All Phase III data will be evaluated for precision, accuracy, and completeness prior to submission of analytical reports to EPA. This evaluation will include both field-generated and CLP-generated data.

4.5 SUBTASK 5.1: DATA EVALUATION III

This is a new subtask under which activity will be performed for the Phase III RI. Under this task, field and laboratory data will be evaluated with respect to the project objectives, and results will be used in the preparation of the risk assessment, RI report, and FS. The site data interpretation and analysis will involve the compilation of all existing data

and data collected during the Phase III RI. Graphics will be used extensively in the presentation of the data so that the spatial relationship of data can be readily discerned. Specific products to be generated as a result of data interpretation tasks include lithologic logs for subsurface soil borings, water level measurements, water table maps, field water quality results, laboratory analytical and QA/QC results, and isopleth maps showing contaminant concentrations.

4.6 TASK 6: BASELINE RISK ASSESSMENT

A baseline risk assessment, including a human health evaluation and an ecological assessment, is required as part of the Conrail RI. Both parts of the analysis will require an assessment of the contaminants on-site; development of a more refined conceptual model identifying potential contaminant migration and exposure pathways, potential receptors, and routes of exposure; a quantitative exposure estimate; a toxicity assessment; and finally, the risk characterization with an uncertainty analysis, which provides a method to assess the risk estimates. The following sections discuss this process.

4.6.1 Subtask 6.0: Human Health Evaluation

4.6.1.1 Overview

For the Human Health Evaluation (HHE), the field data generated in Phases I, II, and III of the RI will be evaluated in terms of their potential impact on human health. The purpose of the HHE is to evaluate the collected data in the context of the Conrail facility setting and to estimate potential current and future threats to public health. The results of the baseline risk assessment will aid in the determination of whether remedial measures may be needed to protect the public health, and, if so, to assist in the selection of appropriate remedial goals.

Based on information from previous investigations, exposure pathways that could be complete under existing or possible future site conditions and may need to be evaluated include inhalation, ingestion, and dermal absorption of contaminants in site soils, use of groundwater as a source of potable water, dermal contact with and incidental ingestion of surface waters and sediments, and possible ingestion of contaminated fish from nearby surface waters.

The methodology used in the HHE of the RI will be consistent with EPA guidance documents, including:

- *Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (Part A)*, Interim Final (EPA 1989a);
- *Guidance for Data Usability in Risk Assessment, Part C Final* (EPA 1992);
- *The Superfund Exposure Assessment Manual* (EPA 1988); and
- *Human Health Evaluation Manual, Supplemental Guidance "Standard Default Exposure Factors"* (OSWER Directive 9285.6-63) (EPA 1991a).

EPA's suggested outline for a baseline risk assessment (RA) report (EPA 1989a) includes five major RA components:

- identification of chemicals of potential concern,
- exposure assessment,
- toxicity assessment,
- risk characterization, and
- uncertainty analysis.

4.6.1.2 Identification of Chemicals of Potential Concern

According to EPA, there are two ultimate objectives of this analysis (EPA 1989a):

- identification of a set of chemicals of potential concern that are likely to be site-related; and
- identification of which data are of acceptable quality for use in quantitative risk assessment.

In preparing this analysis, E & E will follow the nine steps contained in the guidance document for data organization suitable for a baseline risk assessment (EPA 1989a).

These are:

- 1) collation of all data available from the RI, sorted by medium;
- 2) evaluation of the analytical methods used;
- 3) evaluation of the quality of data with respect to sample quantitation limits;
- 4) evaluation of the quality of data with respect to qualifiers and codes;
- 5) evaluation of the quality of data with respect to blanks;
- 6) evaluation of tentatively identified compounds;
- 7) comparison of potential site-related contamination with background levels;
- 8) development of a set of data for use in the risk assessment; and
- 9) any further limitation, if appropriate, of the number of chemicals to be carried through the risk assessment.

After completion of this data review, a revised list of chemicals of potential concern will be selected in accordance with provisions of Section 5.8 of the *Human Health Evaluation Manual, Part A* (EPA 1989a).

From the preliminary RA of groundwater contaminants in the PFS and review of limited data regarding contaminants in other media, the chemicals of potential concern (COPCs) will probably include CCl_4 , TCE, CHL, 1,1-dichloroethene, 1,2-dichloroethene (total), TCA, and tetrachloroethene.

4.6.1.3 Exposure Assessment

The ultimate purpose of an exposure assessment is to estimate intakes for humans at potentially highest risk. In general, an exposure assessment may be based upon two sets of data: site medium-specific (e.g., groundwater, soil, and surface water) concentrations of contaminants, and estimated contaminant concentrations at receptors developed using environmental transport and fate models. Following EPA guidance, the exposure assessment will proceed in three steps (EPA 1989a):

- characterization of exposure setting,
- identification of exposure pathways, and
- quantification of exposure.

4.6.1.3.1 Characterization of the Exposure Setting

In this step, E & E will characterize the exposure setting with respect to general physical characteristics (e.g., climate, vegetation, groundwater hydrology, location of surface water bodies, etc.). In addition, this step will include an evaluation of demographic characteristics (e.g., locations with respect to the facility, activity patterns, presence of sensitive populations, etc.), which could influence exposure of current populations and potential future populations. Residential use of areas immediately adjacent to the facility would appear to be the most sensitive potential land use that would need to be considered in the risk assessment.

4.6.1.3.2 Identification of Exposure Pathways

In this step, E & E will identify those pathways through which current and future populations may be exposed. Exposure pathways will be identified based upon consideration of the sources, releases, types and locations of chemicals at the site, the likely environmental fate of these chemicals, and locations and activities of the potentially exposed populations. Exposure points and exposure routes will be identified for each exposure pathway.

Table 4-2 presents a summary of some of the potentially complete exposure pathways that may be evaluated in the risk assessment. It includes a summary of exposed populations, exposure routes, media, exposure pathways, and rationales for selection or exclusion as examples of the approach that will be used. This table will be revised as needed.

4.6.1.3.3 Quantification of Exposure

In this step, E & E will estimate the magnitude, frequency, and duration of exposure for each pathway identified previously. For the purposes of discussion, this step can be divided into two sequential tasks:

- estimation of exposure concentrations, and
- calculation of intakes.

Estimation of Exposure Concentrations: In this task, the concentrations of chemicals that will be contacted over specified exposure periods will be estimated. Exposure concentrations will be evaluated for reasonable maximum conditions based upon monitoring data and/or chemical transport and environmental fate models. Estimation of exposure concentrations will be performed in a manner consistent with EPA guidance (EPA 1992).

Two or more types of models may be used to estimate exposure concentrations. These models may be used in assessing vapor emissions from contaminated site soils and groundwater transport of site-related contaminants to drinking water wells and surface water bodies.

Calculations of Intakes: In the second quantification of exposure task, E & E will estimate chemical- and pathway-specific intakes organized by the following exposure scenarios, and aggregate exposure routes by receptor population.

- Scenario 1: On-site Person Exposure to Include: Dermal adsorption and incidental ingestion of contaminants in site soils; inhalation of vapors emanating from site soils.
- Scenario 2: Recreational Exposure to Include: Exposure to sediment and surface water by children and adults in parks and lakes surrounding the Conrail facility. Ingestion of fish by recreational fishermen and their families will be considered.
- Scenario 3: Future On-site and Current Off-site Residents: Ingestion of, and dermal absorption of, contaminants in soil, surface water, and sediment; and ingestion of groundwater used for human consumption.

In these scenarios, chemical intakes are estimated using exposure equations that include variables for exposure concentration, contact rate, exposure frequency, exposure duration, body weight, and exposure averaging time. Table 4-2 summarizes the human exposure scenarios, exposure routes, and rationales for their inclusion in or exclusion from the Conrail RA.

Subsequent to estimation of intakes, sources of uncertainty (e.g., current and future land use, variability in analytical data, exposure pathways evaluated, modeling results, and

exposure parameter values, etc.) will be evaluated and summarized. The exposure assessment will conclude with a summary of estimated pathway-specific intakes.

4.6.1.4 Toxicity Assessment

The objectives of the toxicity assessment are twofold:

- to compile information on the nature of adverse health effects that chemicals found on-site could pose; and
- to provide an estimate of the dose-response relationship for each contaminant (i.e., the relationship between extent of exposure and increased likelihood and/or severity of adverse effects).

The toxicity assessment will be divided into three main tasks:

- health effect summaries of toxicology of contaminants of potential concern;
- summaries of quantitative indices of toxicity for non-carcinogens and carcinogens; and
- uncertainties related to toxicity information.

In the first task, toxicology summaries of the contaminants of concern will be prepared. These summaries will discuss qualitatively toxicokinetics and key adverse effects that could potentially result from exposure to site contaminants. In the second task, EPA consensus toxicity indices (e.g., subchronic and chronic reference doses and carcinogenic slope factors, etc.) will be identified for use in the document. Two major sources will be used to identify these toxicity indices:

- EPA's Integrated Risk Information System (IRIS) database, and
- EPA's Environmental Criteria Assessment Office (ECAO) quarterly update of Health Effects Assessment Summary Tables.

Noncarcinogenic and carcinogenic indices will be tabulated separately. For noncarcinogenic effects, tabulations will include chemical route-specific reference doses (RfDs), critical effects, RfD basis/source, and uncertainty/modifying factors. Tables will be

developed in a similar fashion, by chemical and exposure, for carcinogenic effects; these tables will include slope factors (SFs), weight-of-evidence classifications, type of cancer, and SF basis/source.

The third key toxicity assessment task will be an evaluation of uncertainties related to toxicity information. Uncertainties to be assessed may include those related to:

- quality of individual studies used to derive toxicity indices;
- completeness of the overall toxicity data base;
- extrapolation of dose;
- extrapolation of exposure;
- extrapolation across species, strains, sex, and routes of exposure; and
- metabolic differences across sexes and species.

4.6.1.5 Risk Characterization

The final component of the risk assessment process, risk characterization, integrates the findings of the first three components by quantitative estimation of human and environmental risks. For the public subjected to carcinogenic risks, estimated incremental lifetime cancer probabilities will be estimated for each of the scenarios. If more than one scenario applies to certain human receptor populations or subpopulations, estimated carcinogenic risks for the individual scenarios will be summed over scenarios to yield estimated total lifetime risks for those subjected to these combined exposures.

In accordance with EPA exposure assessment guidelines (EPA 1989a, 1991a), a hazard index (HI) for noncarcinogenic risks based on the assumption of dose additivity over contaminants is derived for each chemical and exposure route, and summed over all contaminants. The HI calculated for a single mode of action is a measure of how close the estimated exposure comes to the reference dose. If the HI is less than 1, adverse effects would not be expected. However, if the HI is greater than 1, adverse effects could be possible. Should the index exceed 1, E & E toxicologists will review and segregate major chemical-specific effects identified in the derivation of the RfD, by mechanisms of action and target organ.

Upon segregation, such hazard indices will be recalculated in order to further define potential risks.

Using the methodology briefly described above, E & E will proceed to prepare characterization of risks for the Conrail Study Area. Risk characterization will involve three key tasks:

- characterization of risks for current land-use conditions.
- characterization of risk for future land-use conditions, and
- evaluation of uncertainties.

4.6.2 Subtask 6.1: Ecological Assessment

The Ecological Assessment (EA) portion of the baseline risk assessment focuses on the existing and potential threats, in the absence of remedial action, of a hazardous waste site to nearby natural habitats and the associated flora and fauna. In doing so, the EA aids in the RI/FS decision-making process by providing information concerning whether or not remedial action is necessary. Additionally, if remedial action is deemed necessary, the EA provides information pertinent to selection and development of the remedial technique to be used.

The EA will be conducted according to guidelines specified in the following documents:

- *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA: Interim Final* (EPA/540/G-89/004) (EPA 1989b);
- *Risk Assessment Guidance for Superfund, Volume II: Environmental Evaluation Manual* (EPA/540/1-89/001) (EPA 1989c);
- *Region V Scope of Work for Ecological Assessment* (EPA 1991b);
and
- *Ecological Assessment of Superfund Sites: An Overview, ECO Update 1(2):1-8, Dec. 1991, OSWER Publication 9345.0-051* (EPA 1991c).

The objective of the Phase I EA is to broadly screen the surface waters and sediments of nearby aquatic and wetland habitats for site-related contaminants and to preliminarily estimate the threat of these contaminants to the natural environment. Due to this preliminary

level of assessment, samples from the nearby natural habitats will be collected for chemical analyses, but no biological sampling or toxicity testing of environmental media will be conducted.

Surface water and sediment samples obtained from the St. Joseph River and Baugo Bay will be collected from near-shore and away-from-shore locations in order to sample areas that may present different risk levels to biota due to differences in physical and chemical conditions, as well as slightly different biotic inhabitants. Near-shore locations in rivers generally have slower flow rates, and therefore less mixing occurs. These properties yield slower contaminant diffusion and dispersion rates. Littoral zones near the shores of bays and other lentic water bodies are generally more oxygenated than the generally reducing, anaerobic conditions in the deep waters of the hypolimnion.

Because the contamination migration pathway of concern is groundwater discharge to the aquatic environment, surface water samples will be collected immediately above the sediments. This sampling strategy is designed to address the highest contaminant concentrations in the water column, so that the greatest risk to water column receptors can be assessed.

In addition to the sample analyses obtained during the Phase III field investigation, the EA will incorporate Phase III RI modeling results, which estimate contaminant loading to nearby surface water.

4.7 TASK 7: RI Report

4.7.1 Subtask 7.4: Groundwater Modeling

Under this subtask, E & E will perform a limited analysis of the hydrogeological data developed during the RI to estimate mass contaminant loading to the St. Joseph River. Data from all RI phases will be utilized as input parameters for standard transport calculations in estimating loading rates/volumes. Detailed numerical modeling will not be performed under this subtask.

4.7.2 Subtask 7.5: RI Report Preparation

Under this subtask, the draft RI report will be submitted to EPA for review and comment. After written comments are addressed, the final RI report will be submitted to EPA. The RI report will present data obtained from Phase I, Phase II, and Phase III

investigations and will document tasks performed to complete the Phase III investigation. The RJ report will present an analysis of data, conclusions regarding the nature and extent of contamination, the ecological assessment, the risk assessment (human health evaluation), and the groundwater model results.

Table 4-1

SUMMARY OF SAMPLING AND ANALYSIS PROGRAM

Sample Matrix	Field Parameters	Laboratory Parameters	Samples			Field Quality-Control Samples									Matrix Spike (MS) ^{a,b}			
						Duplicates			Field Blanks			Trip Blanks			(MS) Duplicate			Matrix ^c
			No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	Total
Groundwater (Lead-Screen Auger)	TCE, TCA, CCl ₄ , and CHL screening using Field Gas Chromatograph (GC)	--	200 ^d	1	200	20	1	20	20	1	20	20	1	20	--	--	--	260
Surface Water (Ecological habitats)	pH, temperature, and specific conductance	CLP TCL Volatile Organics	24	1	24	3	1	3	3	1	3	3	1	3	2	1	2	30
		CLP TCL Extractables	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
		CLP TCL Pesticides/PCBs	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
		CLP TAL Metals	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
Water (Drainage Network)	OVA Measurements	CLP TCL Volatile Organics	6	1	6	1	1	1	1	1	1	1	1	1	1	1	1	9
Sediment (Ecological habitats)	--	CLP TCL Volatile Organics	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
		CLP TCL Extractables	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
		CLP TCL Pesticides/PCBs	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
		CLP TAL Metals	24	1	24	3	1	3	3	1	3	--	--	--	2	1	2	30
Sediment (Drainage Network)	OVA Measurements	CLP TCL Volatile Organics	6	1	6	1	1	1	--	--	--	1	1	1	1	1	1	9

key at end of table
 2/1/91, CMAA 10/2/91

Table 4-1

SUMMARY OF SAMPLING AND ANALYSIS PROGRAM

Sample Matrix	Field Parameters	Laboratory Parameters	Samples			Field Quality-Control Samples									Matrix Spike (MS) ^{a,b}			
						Duplicates			Field Blanks			Trip Blanks			(MS) Duplicate			Matrix ^c
			No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	No.	Freq.	Total	Total
Groundwater (Monitoring Wells)	pH, specific conductance, and temperature, HNW/OVA measurements	CLP TCL Volatile Organics	78	1	78	8	1	8	8	1	8	8	1	8	4	1	4	102
Subsurface Soil	HNW/OVA measurements	CLP TCL Volatile Organics	46	1	46	5	1	5	--	--	--	--	--	--	3	1	3	51
		CLP TCL Extractables	15	1	15	2	1	2	--	--	--	--	--	--	1	1	1	7
		CLP TCL Pesticides/PCBs	15	1	15	2	1	2	--	--	--	--	--	--	1	1	1	17
		CLP TAL Metals	15	1	15	2	1	2	--	--	--	--	--	--	1	1	1	17
		CLP SAS Grain-Size Distribution and Permeability	10	1	10	1	1	1	--	--	--	--	--	--	--	--	--	11

^a Matrix spike/matrix spike duplicate (MS/MSD) is required for CLP organic analysis. No extra sample volume is required for soil/sediment MS/MSD. Water samples designated for MS/MSD organic analysis will be collected, with extra sample volumes, at a frequency of one per group of 20 or fewer investigative samples. Triple the normal sample volumes will be collected for VOAs, and double the normal sample volumes will be collected for extractable organics, pesticides, and PCBs.

^b Spikes and duplicates are required for inorganic analysis at a frequency of one per group of 20 or fewer investigative samples. No extra sample volume is required for soil samples. Double the normal sample volume will be collected for water samples.

^c The number of samples to be collected for MS/MSD is not included in the matrix total.

^d Approximate number of samples to be field-screened. Additional samples may be collected and screened depending on initial screening results.

Key:

-- Not applicable

Table 4-2 SUMMARY OF SOME POTENTIALLY COMPLETE PATHWAYS AT THE CONRAIL STUDY AREA			
Potentially Exposed Population	Exposure Routes, Medium, and Exposure Point	Pathway Likely to be Selected for Evaluation?	Reason for Selection or Exclusion
Current Land Use			
On-Site Workers and Site Visitors (trespassers)	Inhalation, dermal adsorption, and ingestion of chemicals of potential concern in soil and sediment on the facility.	Yes	Some soils are contaminated.
Local Residents	Ingestion of groundwater from local wells downgradient of the facility	Yes	Local residents may use groundwater from local wells as drinking water. Groundwater at these wells may be downgradient of facility groundwater.
Recreational Users	Dermal absorption, ingestion of chemicals in surface waters and sediments, and ingestion of fish caught in surface water bodies.	Yes	Wading, playing, and fishing is observed in surface water bodies that might be hydraulically connected to facility groundwater.
Future Land Use			
On-Site Residents	Inhalation, dermal adsorption, and ingestion of chemicals of potential concern in soil on the facility.	Yes	Some soils are contaminated.
On-Site and Off-Site Residents	Ingestion of groundwater from local wells downgradient of the facility.	Yes	On-site and off-site residents may use groundwater from local wells as drinking water. Groundwater at these wells may be downgradient of facility groundwater.
Recreational Users	Dermal adsorption, ingestion of chemicals in surface waters and sediments, and ingestion of fish caught in surface water bodies.	Yes	Wading, playing, and fishing can occur in surface water bodies that might be hydraulically connected to facility groundwater.

5. FEASIBILITY STUDY

The purpose of the FS for the Conrail site is to develop alternative remedial actions, based on the results of the RI, that will mitigate the effects of contamination to human health and the environment. The following sections present the steps involved in conducting the FS.

5.1 TASK 8: REMEDIAL ALTERNATIVES SCREENING

This task constitutes the first stage of the FS. The objective of this task is to develop and evaluate remedial alternatives for additional screening and evaluation. The results of the HHE will be considered throughout this evaluation process.

5.1.1 Subtask 8.2: Preliminary Remedial Technologies III

Based on the study area conditions, waste characterizations, and technical requirements, a master list will be compiled and screened to develop the preliminary remedial alternatives. Those technologies that may prove extremely difficult to implement, require unreasonable time periods, or rely on insufficiently developed technology will be screened out. Emerging technologies that are being evaluated through the EPA's SITE program will also be evaluated, if that information is available.

5.1.2 Subtask 8.3: Development of Alternatives

The remedial response objectives will be further developed and refined in the Phase III RI/FS as additional information about study area contamination conditions and human and environmental impacts becomes available. For each impacted medium, a remedial response objective will be developed. The response objectives will be based on public health and

environmental concerns. Section 300.68 of the National Contingency Plan (NCP), EPA's interim guidance, and the requirements of any other applicable EPA, federal, and Indiana environmental standards, guidance, and advisories as defined under Section 121 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Preliminary cleanup objectives will be developed under formal consultation with EPA and the Indiana Department of Environmental Management (IDEM). Development of remedial response objectives will also include a refinement of the project-specific applicable or relevant and appropriate requirements (ARARs) and requirements to be considered (TBCs).

Based on the results of the RI and consideration of preliminary remedial technologies, a limited number of alternatives, which are based on objectives established for the response, will be developed. To the extent that it is both feasible and appropriate, the following alternatives will be considered.

- Treatment alternatives for source control that eliminate the need for long-term management (including monitoring).
- Alternatives involving the treatment as a principal element to reduce the toxicity, mobility, or volume of waste.

In addition, the following two alternatives will be considered:

- An alternative that involves containment of waste with little or no treatment but provides protection of human health and the environment primarily by preventing exposure to or reducing the mobility of the waste.
- A no action alternative.

For groundwater response actions, a limited number of remedial alternatives will be developed within a performance range that is defined in terms of a remediation level. The targeted remediation level will be within a risk range of 10^{-4} to 10^{-7} for maximum lifetime risk and includes different rates of restoration. If feasible, one alternative that would restore groundwater quality to a 10^{-6} risk for maximum lifetime risk level within five years will be configured.

The remedial action alternatives developed for the Conrail study area may involve both source control and groundwater response actions. In these instances, the two elements

may be formulated together so that the comprehensive remedial action is effective and the elements are complementary. However, because each element has different requirements, they will be detailed separately in the development and analysis of alternatives.

5.1.3 Subtask 8.4: Initial Screening of Alternatives

The remedial alternatives identified will be screened on the basis of effectiveness, implementability, and cost. Each of these factors is described herein.

- **Effectiveness.** Alternatives will be evaluated to determine whether they adequately protect human health and the environment and meet contaminant-specific ARARs and TBCs. Additionally, the reliability of the process will be taken into consideration. Processes not proven to be applicable to the specific contaminants on site may be discarded.
- **Implementability.** This factor relates to whether or not a process option is workable at the site. Processes not able to meet location- and action-specific ARARs will be screened out. Processes requiring prohibitively extensive permitting from government agencies may also be dropped. Additionally, if sufficient treatment, storage, or disposal capacity is not available for certain off-site options, these also may be screened out.
- **Cost.** Cost will not be used as a major factor in the screening of process options. Cost will only be a factor in comparing process options that can produce similar levels of remediation.

As a result of the screening of the identified alternatives, at least six remedial alternatives will be selected. The alternatives selected will be in compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), SARA, and other environmental statutes.

5.1.4 Subtask 8.5: Alternatives Array Document

To obtain ARARs from IDEM and EPA, a detailed description of alternatives (including the extent of remediation, contaminant levels to be addressed, and method of treatment) will be prepared. This document will also include a brief site history and background, a site characterization that indicates the contaminants of concern, migration pathways, receptors, and other pertinent site information. A copy of this Alternatives Array

Document will be submitted to EPA and IDEM, along with the request for a notification of the standards.

5.1.5 Subtask 8.6: Data Requirements

Data requirements that are specific to the relevant and applicable technologies will be identified. These requirements will be focused on providing data that is needed for detailed evaluation and development of a preferred alternative.

5.2 TASK 9: REMEDIAL ALTERNATIVES EVALUATION

Alternatives remaining after the initial screening described in the previous step will undergo further analysis. Criteria by which the alternatives will be assessed include the following:

- Compliance with ARARs and TBCs. This criterion is used to determine how each alternative complies with ARARs and TBCs.
- Reduction of mobility, toxicity, or volume. This criterion is used for selecting remedial alternatives that employ treatment technologies that permanently and significantly reduce toxicity, mobility, or volume of the contaminant. The factors to be evaluated include:
 - Treatment process and remedy,
 - Amount of hazardous material destroyed or treated,
 - Reduction in toxicity, mobility, or volume of the contaminants,
 - Irreversibility of the treatment, and
 - Type and quantity of treatment residuals.
- Short-term effectiveness. This criterion addresses the effects of the alternative during the implementation phase until the remediation action is complete. The factors to be evaluated include time necessary to implement the remedial action and short-term threats to the safety of nearby communities, workers at the site, and the environment during the construction period.
- Long-term effectiveness. This criterion addresses the long-term threats to human health and the environment after completion of

remedial action. The primary focus of this evaluation is to determine the extent and effectiveness of the controls that may be required to manage the risk posed by treatment residuals and/or untreated wastes.

- **Implementability.** This criterion addresses the technical and administrative feasibility of implementing an alternative. Considerations of technical feasibility include:
 - Ability to construct the technology or technologies involved,
 - Performance and reliability of the technology(ies), and
 - Ease of undertaking additional remedial action, if necessary, and operation and maintenance considerations.

Consideration of administrative feasibility include:

- Coordination with other agencies.
 - Availability of treatment, storage capacity, and disposal services, and
 - Availability of necessary equipment and specialists.
- **Cost.** This criterion addresses the costs of remediation. Costs to be considered include the cost of implementation, operation, and maintenance of each alternative. Because all of the work will not be conducted at the same time, a present-worth analysis needs to be performed.
 - **Community acceptance.** This criterion incorporates public concerns into the evaluation of the remedial alternatives.
 - **State acceptance.** This criterion evaluates the technical and administrative issues and concerns that the state of Indiana may have regarding each of the alternatives.
 - **Overall protection of human health and the environment.** This criterion is utilized to evaluate whether each alternative meets the requirement that it be protective of human health and the environment. Factors to be evaluated include:
 - Consistency of the remedial alternative with the risk assessment performed in Task 6,

- Compliance with ARARs and TBCs.
- Short-term and long-term effectiveness, and
- Environmental impact.

After each alternative has been individually assessed against each of the nine criteria, a comparative analysis will be conducted to select the most feasible alternative. In this analysis, the relative strengths and weaknesses of each alternative, with respect to each criterion, will be weighed. If innovative technologies are being considered, their potential advantages in cost or performance and the degree of uncertainty in their expected performance will be evaluated and considered in the selection of the preferred remedial alternative.

A cost evaluation will be performed for each of the selected remedial alternatives and will include the following steps:

- Operation and maintenance, and institutional costs;
- Present-worth analysis; and
- Sensitivity analysis.

5.3 TASK 10.1: FEASIBILITY STUDY REPORT III

The entire FS process will be documented in a draft FS report, and, following receipt of written comments from EPA, in a final FS report. The FS report will not be considered final until a letter of approval is issued by the RPM. The FS report will document the decision process used by the project team for the selection of the recommended alternative. The FS report will include a description of the technologies considered, the screening and evaluation process used, a summary of the detailed technical and cost evaluations, and the comparative evaluation of remedial alternatives.

6. PROJECT ADMINISTRATION

6.1 SUBTASK 12.1 PROJECT MANAGEMENT III

Activities will include coordination of the Phase III RI ensuring that the necessary personnel and equipment are available and providing continued communication with the RPM. The following activities will also be conducted under project management III.

- Phase III RI/FS initiation requirements including a kick-off meeting with EPA to discuss project goals;
- Timely completion of all scheduled activities and assuming cost-effectiveness of each activity, and adherence to project budget;
- Maintenance of project quality control and quality assurance;
- Evaluation of documentation and graphics for completeness and compliance with EPA standards;
- Submittal of technical and financial monthly progress reports; and
- Project closeout and transfer of project-related information to EPA.

6.2 TASKS 13 AND 15: POST-RI/FS TASKS

E & E will provide support to EPA when requested for activities that occur after the RI/FS is completed. Support may include assistance in preparing the ROD or Responsiveness Summary, and assistance to parties involved in the remedial design/remedial action. The scope and budget estimated for this effort, if needed, will be determined in meetings with EPA after the RI/FS report is approved and follow-up actions are identified.

6.2.1 Task 13: ROD Support

This task corresponds to the work assignment SOW Revision No. 4 Task 11. Following completion of the RI and FS reports and the public comment period, E & E will provide support, as requested, to EPA in preparation of the ROD. Such support may include, but is not limited to, summarizing pertinent information from the RI and FS reports, and assistance with the Responsiveness Summary. As stated in the revised work assignment SOW, 32 LOE hours have been budgeted for this task. Activities under this task will be initiated only at the direction of the RPM.

6.2.2 Task 15: Negotiation Support

This task corresponds to the revised work assignment SOW Task 12. E & E will provide EPA with technical support in negotiation with responsible parties for the remedial design and remedial action phase, which will follow issuance of the ROD. As stated in the revised work assignment SOW, 80 LOE hours have been budgeted under this task to cover support activities. Activities under this subtask will be initiated only at the direction of the RPM.

7. PROJECT ORGANIZATION

As illustrated in Figure 7-1, E & E's project organizational structure is designed to provide EPA with clearly defined lines of authority, responsibility, and communication, both within E & E and between E & E and EPA. E & E's ARCS contract program manager, Mr. Thomas Yeates, will ensure that the goals and objectives of EPA are met, and that technically sound, high-quality reports are produced. He has primary responsibility for the technical direction and quality of hazardous waste investigation/remediation projects for the ARCS V contract. He holds corporate responsibility for manpower allocation and for ensuring that corporate resources are made available to E & E site managers.

On a day-to-day basis, EPA will be dealing directly with Ms. Bridget Lombardi, who will serve as site manager for the Conrail site RI/FS. She will have full authority to commit the resources necessary to meet project requirements.

Ms. Lombardi will have access to experienced task leaders who will assist in the preparation of work plans and be responsible for managing and controlling on-site tasks, supervising support staff, maintaining close coordination with EPA, and assuring confidentiality and work quality. The RI task leader will be responsible for the RI field tasks and oversight of all subcontractors. The FS task leader will be responsible for the FS and the preparation of the FS report. The risk assessment task leader will be responsible for conducting the risk assessment and preparing the technical memorandum associated with the risk assessment. Other support activities may be provided by health and safety, computer services, and publications personnel as indicated in Figure 7-1.

QA/QC will be maintained by Mr. Russ Short, E & E's Corporate QA Director, and by task leaders assigned to specific project tasks. QA will be governed by the site-

specific QAPPs developed for the Phase I, Phase II, and Phase III RIs, and by E & E's approved management plan for the ARCS V contract.

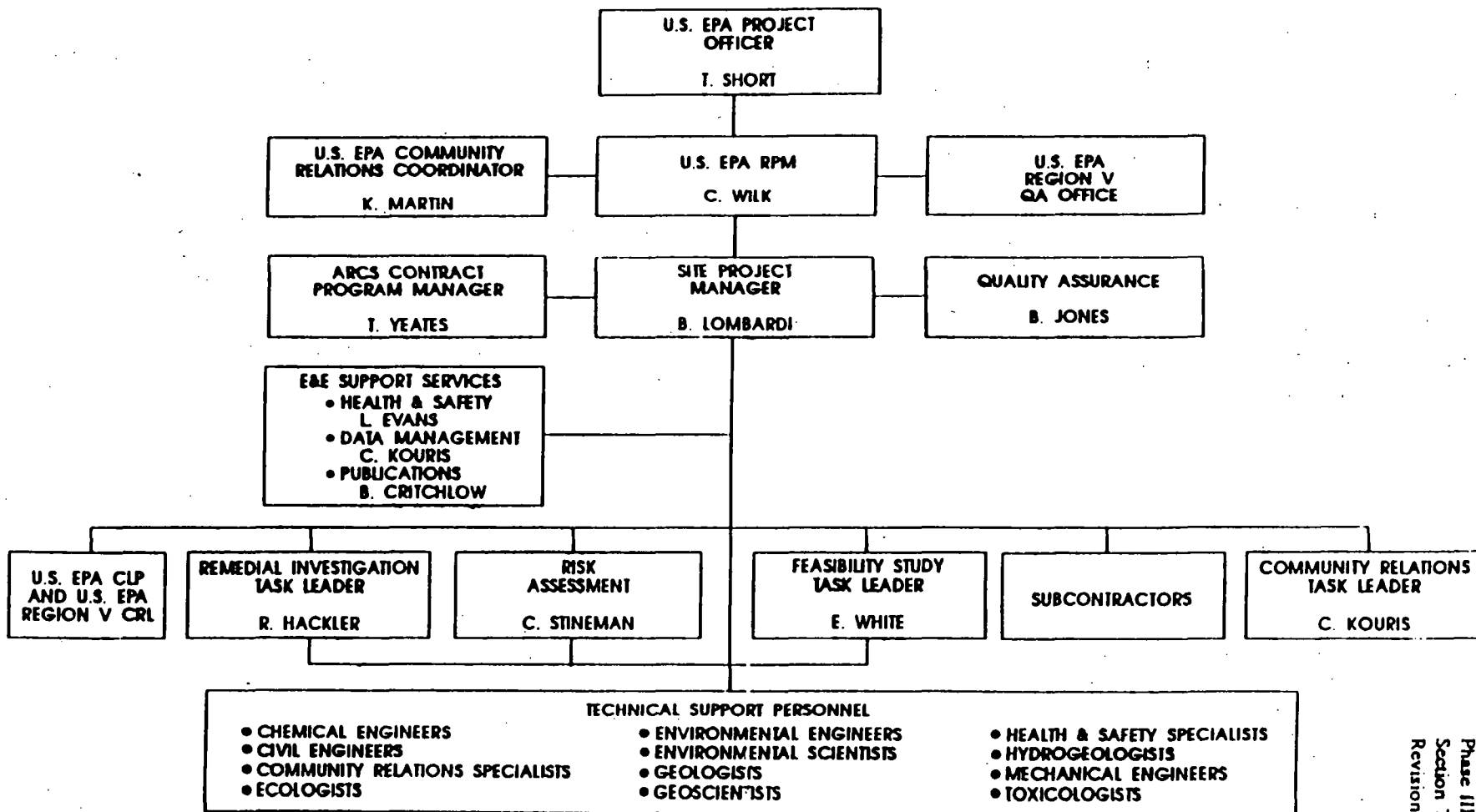


FIGURE 7-1 PROJECT ORGANIZATION CHART FOR CONRAIL RI/FS

Conrail RI/FS
Phase III Work Plan
Section 7
Revision 0 October 22, 1992

8. PROJECT SCHEDULE

Figure 8-1 provides a schedule for the completion of the Phase III RI and FS outlined in this work plan. Based upon discussions during the kick-off meeting and subsequent scoping meetings, the schedule for project deliverables (draft and final RI and FS reports, Alternatives Array Document) has been modified from the schedule specified in the revised work assignment SOW.

The following assumptions have been made in developing the proposed project schedule.

- The start date for the Phase III RI will be contingent upon a notice to proceed from EPA (i.e., Work Plan, QAPP approval). It must be noted that, in order to meet the schedule for final deliverables, E & E assumes that the start date for the Phase III field investigation will be no later than November 30, 1992.
- EPA/IDEM will obtain site access for field investigation activities within a time frame that will not disrupt the proposed schedule.
- E & E will receive formal written comments on the draft project plans within two weeks following the submittal date.
- Written comments on draft RI and FS reports will be received by E & E within 30 days following the submittal date.
- Level D protection will be required for all field investigation activities. Should site conditions change, warranting an upgraded level of protection, the schedule outlined in this plan would no longer be valid, and a revised schedule may be required.
- Weather conditions will not prevent the continuous performance of field investigation. It must be noted that extreme weather and

logistical difficulties resulting from conditions beyond E & E's control may impede progress during the course of the field investigation. Significant delays of this nature may impact the completion date for the project.

- All equipment required for the field investigation will be procured prior to the scheduled start of the investigation.
- A 10-day on, four-day off field schedule will be used.
- Existing data will be sufficient and only limited field testing, if any, will be required to complete the evaluation of remedial alternatives in the FS.
- Validated data will be received by E & E a maximum of six weeks after samples have been submitted.
- The schedule of activities for Subtasks 2.6 through 2.8, Task 13, and Task 15 are not shown on Figure 8.1. E & E assumes that these tasks/subtasks will consist of intermittent activity to be initiated only at the direction of the RPM.

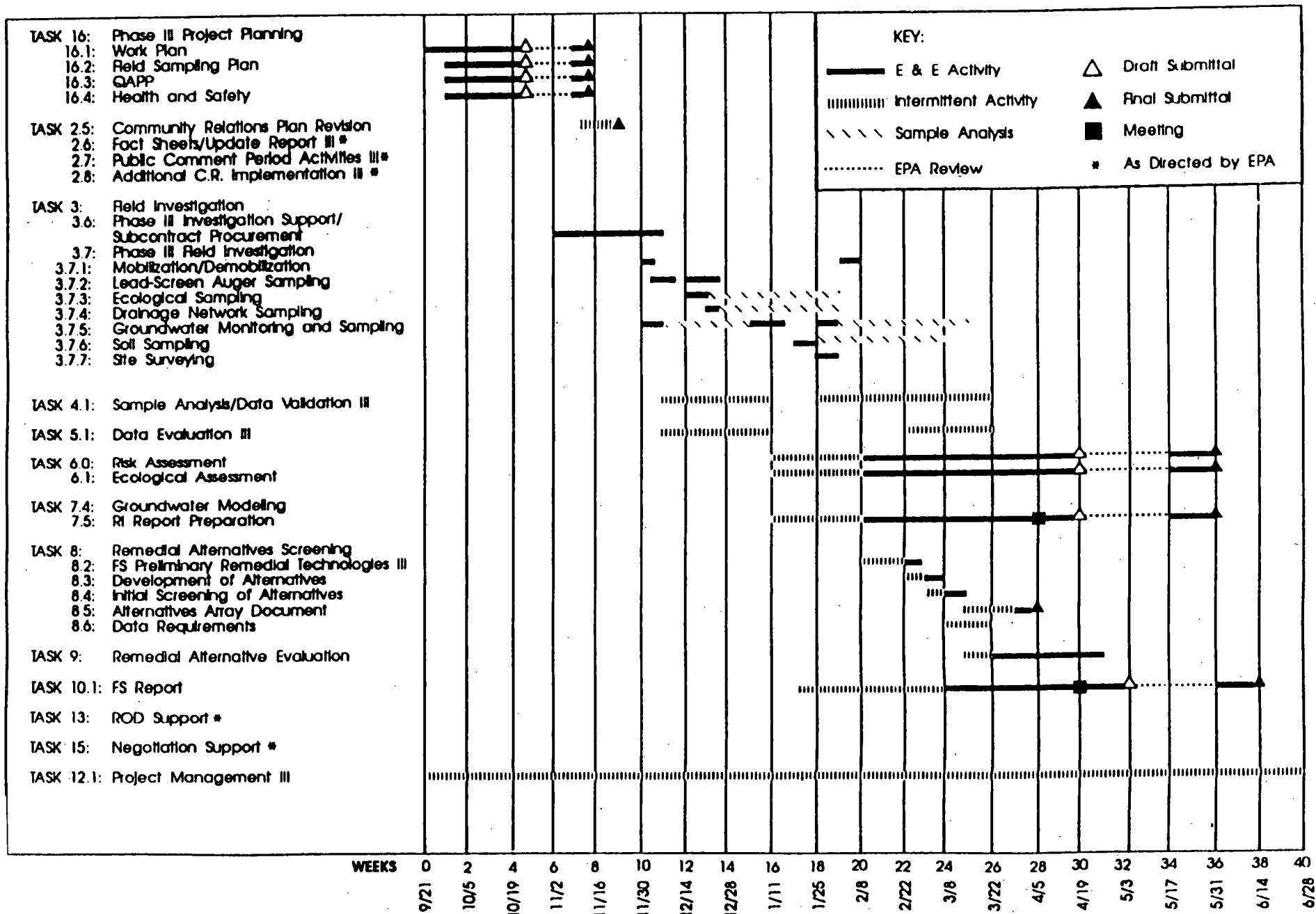


FIGURE 8-1 PHASE III RI AND FS SCHEDULE FOR CONRAIL SITE

9. PROJECT COST

Detailed costs for each task, along with worksheets to develop these costs, are provided under separate cover. The budget estimate for the project includes all existing and new tasks. Actual cost-to-date figures, as of September 26, 1992, are included for all Phase I and II tasks that have been completed. For existing tasks that are not yet completed, (e.g., 16.1 Work Plan, 16.2 FSP, 16.3 QAPP, 16.4 HSP, and 3.6 Investigation Support/ Procurement), actual cost-to-date figures are combined with projected additional costs required to complete the tasks. The project costs for the Phase III RI and FS were developed under the following key assumptions.

- Actual drilling subcontract costs will not exceed those listed in the budget estimate. The procurement of an office and a laboratory trailer will be handled as a subcontract. Costs for the trailers are based on a 4- and 2-month lease period, respectively.
- Costs for field equipment purchases and rental (e.g., GC instrument leases) are charged to a site-specific Program Management task under the ARCS contract, and therefore are not included in the budget estimate. Miscellaneous supplies, such as sample bottles, tools, film, and other expendable supplies purchased in the field, will also be charged to Program Management. Gasoline for ARCS vehicles and sampling equipment, such as ice, baggies, etc., are included in the budget estimate.
- The cost for disposal of investigation-derived waste has been included in Task 3.7. The cost for disposal of the Phase III investigation-derived waste is based on informal inquiries to qualified firms.
- For Tasks 6, 7, 8, and 9, E & E's Chicago office will be supported by personnel from E & E Headquarters in Buffalo, New York. One round trip airfare between Chicago and Buffalo and travel expenses for one week have been budgeted for each task.

- The field team will use ARCS vehicles for transportation to and from the site. A 15-foot box truck will be rented to house and transport a 500-gallon polyethylene tank used for containerizing purge water.
- Delays due to severe weather are not included in the budget.

10. REFERENCES

E & E, July 1992, *Conrail RI/FS Phase II Technical Memorandum*.

_____, February 1991a, *Work Plan for the Phase II Remedial Investigation and Phased Feasibility Study at the Conrail Site, Elkhart, Indiana*.

_____, April 1991b, *Phased Feasibility Study*.

EPA, 1992, *Guidance for Data Usability in Risk Assessment, Part C, Final*.

_____, 1991a, *Human Health Evaluation Manual, Supplemental Guidance, "Standard Default Exposure Factors"* (OSWER Directive 9285.6-63).

_____, 1991b, *Region V Scope of Work for Ecological Assessment*.

_____, 1991c, *Ecological Assessment of Superfund Sites: An Overview, ECO Update 1(2):1-8*, December 1991, OSWER Publication 9345.0-051.

_____, 1989a, *Risk Assessment Guidance for Superfund, Volume I: Human Health Evaluation Manual (Part A), Interim Final*.

_____, 1989b, *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA: Interim Final* (EPA/540/G-89/004).

_____, 1989c, *Risk Assessment Guidance for Superfund, Volume II: Environmental Evaluation Manual* (EPA/540/1-89/001).

_____, 1988, *The Superfund Exposure Assessment Manual*.